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JOURNAL OF
SOCIAL SCIENCE,

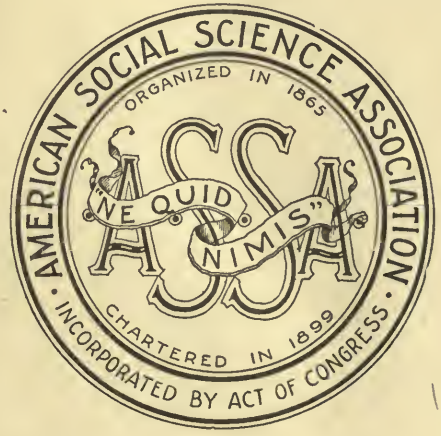
CONTAINING THE

PROCEEDINGS OF THE AMERICAN ASSOCIATION.

NUMBER XL. DECEMBER, 1902.

WASHINGTON PAPERS OF 1902.

PAPERS READ IN THE DEPARTMENTS OF EDUCATION, HEALTH, JURISPRUDENCE, AND SOCIAL ECONOMY, WITH STENOGRAPHIC NOTES OF DEBATES.



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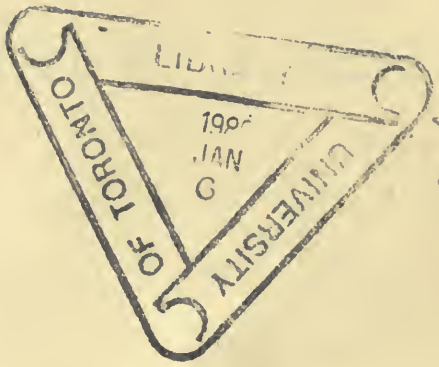

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EDITED BY

FREDERICK STANLEY ROOT, M.A.

GENERAL SECRETARY OF THE ASSOCIATION, 129 EAST 15TH STREET, NEW YORK CITY.

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INTRODUCTION.

The papers included in this number of the *Journal of Social Science* comprise all of the Washington addresses of 1902. The debates, which followed the reading of papers, are stenographically reported; but, owing to the large amount of matter thus supplied to the editor, a considerable reduction in quantity was necessitated by the space limitations of the present volume. This stenographic matter has been revised either by the editor or by the contributor to the discussion, and fairly represents, in substance, the opinions of the participants in the debate.

It may be well in this place to remind essayists once more of the *invariable rule* of the Association, that all papers engaged for the General Meeting are so secured with the understanding that they may be published in the *Journal* if deemed advisable. The members of the Council, however, are not pledged in advance to the publication of any particular paper. If writers choose to publish elsewhere, it must be with the stipulation that their papers may also be printed in the *Journal*, at the option of the Council as to date of publication. Heads of Departments are not solicitous to secure essays which, in general form and substance, have been read elsewhere before presentation at Washington.

A list of all addresses and papers will be found in the Table of Contents on page iii.

MEMBERS OF THE ASSOCIATION.

All officers are *ex-officio* members of the Association, but persons serving on the Department Committees may or may not be members of the Association.

In the list herewith submitted the annual and life members are given alphabetically, and the honorary and corresponding members according to nationality. The only distinction between honorary and corresponding members is that the former reside in the United States, and the latter in foreign countries. It was voted at a meeting of the General Council that the *Journal* of the Association shall not be sent to any member who has not paid his dues for the year in which the convention is held which is reported in the *Journal*. It was subsequently voted at a meeting held at Woodmont, Conn., July 6, 1898, that the General Secretary be permitted to use his discretion in carrying into effect this resolution.

BUSINESS OF 1902.

The American Social Science Association held its Fortieth Annual Meeting at Washington, D.C., beginning Monday evening, April 21, and closing with the session of Friday morning, April 25. The proceedings of the convention were conducted in the large hall of Columbian University, which was kindly placed at our disposal by the faculty of that institution.

At the opening session on Monday evening the Hon. Oscar S. Straus, LL.D., the President of the Association, read a paper on "Our Diplomacy, with Reference to our Diplomatic and Consular Service." This was followed by a General Meeting of the Association at which a Nominating Committee was appointed by the President to bring in a list of officers for the ensuing year. This committee consisted of the Hon. F. J. Kingsbury, LL.D., Professor George L. Raymond, and the Hon. Carroll D. Wright, LL.D. At a subsequent meeting of the Association the list of officers as reported was adopted, and the names will be found on a succeeding page of the *Journal*. At a meeting of the Association on Wednesday morning resolutions of sympathy were telegraphed the Hon. Francis Wayland, chairman of the Department of Jurisprudence, who was detained by illness at Camden, S.C.

In addition to general business transacted, a regular meeting of the General Council of the Association was held in the parlor of the Hotel Gordon on Wednesday afternoon, April 24. The minutes of the previous meeting were read and approved. The report of the Treasurer was received and ordered on file, and the thanks of the Association tendered that official.

It was then

Voted, That the Secretary publish the *Journal* on the same general plan as in previous years.

Voted, That a notice be sent by the Secretary to delinquent members in arrears for payment of dues for two years, requesting payment within thirty days on penalty of being dropped from the rolls of the Association.

Voted, That the President and Secretary be appointed a Committee on Election of Members, with power to add to numbers.

Voted, That the next meeting of the Association be held at Boston, Mass., the time of meeting to be determined by the President and General Secretary.

The Council then adjourned without date.

FREDERICK STANLEY ROOT,
General Secretary.

CONSTITUTION, BY-LAWS.

LIST OF OFFICERS, MEMBERS, ETC.

OF THE

American Social Science Association

DECEMBER, 1902.

CONSTITUTION.

I. This society shall be called the AMERICAN SOCIAL SCIENCE ASSOCIATION.

II. Its objects shall be classified in five departments: the first, of Education and Art; the second, of Health; the third, of Trade and Finance; the fourth, of Social Economy; the fifth, of Jurisprudence.

III. It shall be administered by a President, as many Vice-Presidents as may be chosen, a Treasurer, a Secretary, and a Council, charged with general supervision; five Department Committees, established by the Council, charged with the supervision of their respective departments; and such Local Committees as may be established by the Council at different points, to serve as branch associations. *The Council shall consist of President, Treasurer, Secretary, First and Second Vice-Presidents, the Chairman and Secretary of each Department, and ten Directors, with power to fill vacancies and to make their own By-laws.* The President, Vice-Presidents, Treasurer, Chairman, and Secretaries of Departments, and Directors shall be chosen annually by members of the Association, and shall hold office till their successors are chosen. The President, or in his absence a Director, shall be chairman of the Council. The Chairmen of the Local Committees shall be chosen at the pleasure of their respective committees. Whenever a Branch Association shall be organized and recognized as such by the Council, its President shall be *ex officio* one of the Vice-Presidents of the American Association, and, together with the Secretary and Treasurer, shall be entitled to all the privileges of membership in that Association. And, whenever a Local Department shall be organized and recognized as such by the Council, its Chairman shall become *ex officio* a member of the parent Association. The Chairman and Secretary of each Department, with the consent of the President of the Association, may appoint such special Department Committees as they may think best. The General Secretary shall be elected for three years, unless he resigns, or is removed by a two-thirds vote of the members present and voting in a regular meeting of the Council; and out of his compensation he may pay the salary of an Assistant Secretary, who may also be Secretary of one Department.

IV. Elections to membership shall be made by Standing Committee appointed by the Council in such manner as Council may provide. Any person so elected, and on payment of annual membership fee of five dollars, may continue a member by paying annually such further sum as may be fixed at the Annual Meeting of the Association, not exceeding ten dollars. On payment of one hundred dollars any person may become a life member, exempt from assessments. Honorary and corresponding members may be elected and exempted from the payment of assessments.

V. The Council shall have sole power to call and conduct General Meetings, and to publish the Transactions and other documents of the Association. The Department Committee shall have power to call and conduct Department Meetings.

VI. No amendment of this Constitution shall be made, except at an annual meeting, with public notice of the proposed amendment.

BY-LAWS OF THE ASSOCIATION.

[NOTE.— At a meeting of the Council of the Association, held May 9, 1900, at Washington, a committee of three was appointed to revise Constitution and formulate By-laws to be considered and adopted by the Council at the earliest opportunity. That committee consisted of the Hon. S. E. Baldwin, the Hon. Francis Wayland, and the General Secretary.

At a subsequent meeting of the Council of the Association, held in New Haven, Conn., Oct. 12, 1900, this committee reported the following By-laws, which were *unanimously* adopted by the Council. Since the Constitution confers upon the Council power to enact its own By-laws, no further action by the Association is necessary.]

ARTICLE I.

ORDER OF BUSINESS.

The following order of business shall be observed at all meetings of the General Council of the Association: —

(*a*) Reading of minutes.
(*b*) Report of treasurer.
(*c*) Report of General Secretary.
(*d*) Report of committees.
(*e*) Unfinished business.
(*f*) New business.

ARTICLE II.

QUORUM.

The quorum of the Council at all regular and special meetings shall consist of five members, of whom three shall be of the *ex-officio* members of the Council.

ARTICLE III.

VACANCIES.

SECTION 1. A committee shall be appointed on the first day of the general session of the Association to nominate officers, and such committee shall report upon the morning of the last day of the general session.

SECT. 2. The President may fill any vacancy occurring during the year in any office.

ARTICLE IV.

AMENDMENTS.

The By-laws of the Association may be altered, amended, or repealed by the Council at any meeting by a two-thirds vote of the members present.

ARTICLE V.

TREASURER.

SECTION 1. It shall be the duty of the Treasurer to forward bills for annual dues on the first day of January of each successive year, and to meet all bills for printing, publishing, salaries, etc., on presentation of vouchers approved by President or First Vice-President, and the General Secretary.

SECT. 2. No funds shall be set apart for permanent investment without vote of Council; and all funds so set apart may be invested by the Treasurer at his discretion.

SECT. 3. The President or First Vice-President may draw on the Treasurer in favor of the General Secretary at any time for such sums, not exceeding one hundred dollars at any one time, as the President or First Vice-President may deem necessary to meet any proper expenses incident to the management of the Association or the proceedings of the Committee on Elections to Membership.

ARTICLE VI.

PRINTING.

SECTION 1. The selection of papers for publication in the *Journal* shall be left with the President and General Secretary, the latter serving also as editor of the *Journal*, and with the Heads of Departments. The Chairman of each Department will indicate to the General Secretary what papers, in his judgment, are available for publication in the report of proceedings.

SECT. 2. It shall be the duty of the General Secretary to print and distribute such information concerning the objects and purposes of the Association as may be useful in securing new members.

SECT. 3. It shall be the duty of the General Secretary to publish and distribute a cloth-bound copy of the annual *Journal* of the Association to each member in accordance with provisions under article referring to *Memberships*. Each essayist will be entitled to twenty-five reprints of his paper at the expense of the Association, on condition that his application is placed on file prior to the printing of his paper.

SECT. 4. If, in the judgment of the Treasurer and General Secretary, the funds of the Association will not justify publication in cloth, the current edition of the *Journal* shall appear in paper. The uniform date of publication shall be within six months of the Annual Meeting of the Association. Distribution of the *Journal* shall be effected as soon thereafter as possible.

ARTICLE VII.

MEMBERSHIPS.

SECTION 1. Elections to membership shall be made in accordance with provisions contained in Article IV. of the Constitution.

SECT. 2. After initial payment of assessment fee, all members in arrearages for the next following fiscal year of the Association shall not be entitled to the *Journal*. Failure to remit annual dues for two consecutive years shall result

in loss of membership in the Association. The General Secretary, however, may exercise his discretion as to the application of this rule in given cases.

ARTICLE VIII.

SALARIES.

The General Secretary shall be paid the amount of his salary in quarterly instalments upon the first days of October, January, April, and July, respectively; and he shall draw upon the Treasurer at his discretion such sums as may be allotted by vote of Council for clerical assistance.

OFFICERS OF THE ASSOCIATION.

1902-1903.

President, Hon. OSCAR S. STRAUS, LL.D., New York City.

First Vice-President, FREDERICK J. KINGSBURY, LL.D., Waterbury, Conn.

Second Vice-President, Hon. SIMEON E. BALDWIN, New Haven, Conn.

Vice-Presidents.

Hon. FRANCIS WAYLAND, LL.D., New Haven, Conn.
Prest. DANIEL C. GILMAN, LL.D., Baltimore, Md.
Hon. WILLIAM T. HARRIS, LL.D., Washington, D.C.
Hon. FRANK B. SANBORN, Concord, Mass.
Hon. CARROLL D. WRIGHT, LL.D., Washington, D.C.
Prest. J. B. ANGELL, LL.D., Ann Arbor, Mich.
Hon. A. D. WHITE, LL.D., Berlin, Germany.
Hon. JOHN EATON, Washington, D.C.
Mr. GEORGE WESTINGHOUSE, Washington, D.C.
Hon. JOHN W. FOSTER, LL.D., Washington, D.C.
LUCY HALL-BROWNE, M.D., Brooklyn, N.Y.
Mrs. CAROLINE H. DALL, Washington, D.C.
GRACE PECKHAM MURRAY, M.D., New York.
H. HOLBROOK CURTIS, M.D., New York.
Rev. F. G. PEABODY, D.D., Cambridge, Mass.
Prof. GEORGE L. RAYMOND, L.H.D., Princeton, N.J.
Mrs. VIRGINIA B. MCKELWAY, Brooklyn, N.Y.
C. A. WOODS, Marion, S.C.
Rev. JOSEPH ANDERSON, D.D., Waterbury, Conn.

General Secretary, FREDERICK STANLEY ROOT, M.A., 129 E. 15th St., New York.

Treasurer, W. C. LEGENDRE, 59 Wall St., New York.

Department Officers.

I. *Education and Art.*—Mr. S. T. DUTTON, New York City, *Chairman;* Mr. JAMES P. MUNROE, Boston, Mass., *Secretary.*

II. *Health.*—SAMUEL H. DURGIN, M.D., Boston, Mass., *Chairman;* Dr. HIBBERT W. HILL, Boston, Mass., *Secretary.*

III. *Social Economy.*—JOHN GRAHAM BROOKS, Cambridge, Mass., *Chairman;* HORACE G. WADLIN, Boston, Mass., *Secretary.*

IV. *Jurisprudence.*—Hon. CHARLES BULKLEY HUBBELL, New York City, *Chairman;* Prof. ISAAC FRANKLIN RUSSELL, New York City, *Secretary.*

LIFE MEMBERS.

Extract from Constitution: "On payment of one hundred dollars, any person may become a Life Member, exempt from assessments."

Angell, Mr. George T., 19 Milk St., Boston, Mass.
Baldwin, Hon. S. E., LL.D., New Haven, Conn.
Barnard, Mr. James M., 140 Beacon St., Boston, Mass.
Barnard, Mrs. James M., 140 Beacon St., Boston, Mass.
Blatchford, Mr. J. S., Boston, Mass.
Bradford, Mr. Gamaliel, 502 Beacon St., Boston, Mass.
*Cole, Mr. W. A., New York City.
*Dike, Mr. Henry M., New York City.
Dodge, Mr. Charles C., 33 Broadway, New York City.
Dodge, William E., Jr., 99 John St., New York City.
Eliot, Mrs. Samuel, Boston, Mass.
Endicott, William, Jr., Boston, Mass.
*Farwell, Mrs. A. G., Boston, Mass.
Hermann, Mrs. H., 59 W. 56th St., New York City.
Hewitt, Hon. Abram S., 9 Lexington Ave., New York City.
Hoyt, Hon. J. W., The "Victoria," Washington, D.C.
James, Hon. D. Willis, 45 Wall St., New York City.
*Lawson, Rev. Albert G., Camden, N.J.
Letchworth, Mr. W. P., Portageville, N.Y.
Libbey, Mr. Jonas M., New York City.
Patterson, W. H., 275 Fifth Ave., New York City.
Sanborn, Hon. Frank B., Concord, Mass.
Sanborn, Mrs. Louisa L., Concord, Mass.
Smith, Prof. Goldwin, LL.D., Toronto, Canada.
Stokes, Mr. Anson Phelps, 45 Cedar St., New York City.
Stokes, Mr. I. N. Phelps, 47 Cedar St., New York City.
Stokes, Mr. Thomas, 47 Cedar St., New York City.
Straus, Hon. Oscar S., 42 Warren St., New York City.
Villard, Mrs. Henry, 145 W. 38th St., New York City.
Ward, Mr. J. Q. A., 119 W. 52d St., New York City.
Ware, Mr. William R., 130 E. 27th St., New York City.
Wayland, Prof. Francis, LL.D., New Haven, Conn.
White, Hon. Andrew Dickson, LL.D., Berlin, Germany.
Wolcott, Miss Ella L., Elmira, N.Y.
Young, Mr. J. Edward, 130 William St., New York City.

[Names marked with (*) cannot be found by post-office officials.]

HONORARY AND CORRESPONDING MEMBERS.

In America.

Prof. J. Irving Manatt, Providence, R.I.
Major-gen. O. O. Howard, 150 Nassau St., New York City.
Edmund A. Meredith, Esq., care The Toronto Income Trust Co., Yonge St., Toronto, Can.
Hon. Domingo F. Sarmiento, Buenos Ayres.
Lewis A. Sayre, M.D., 795 Broadway, New York.

In Great Britain and Ireland.

Sir Walter Crofton, The Close, Winchester.
Lord Radstock, London.
*Miss Frances Power Cobbe, 24 Cheyne Walk, London, S.W.
Henry Dunning McLeod, Esq., Oxford and Cambridge Club, London.
Alfred Field, Esq., Birmingham.
Thomas H. Barker, Esq., Manchester.
Henry W. Ackland, M.D., F.R.S., Oxford.
Miss Louisa Innes Lundsden, Glenbogie, Rhynie, Scotland.
Herbert Spencer, Esq., London.
Miss J. Francis Dove, St. Andrews, Scotland.
Lord Hobhouse, 15 Bruton Street, London.
Prof. James Bryce, M.P., London.
Geoffrey Drage, Esq., London.
Moncure D. Conway, Esq., London.

In France.

M. August Laugel, 12 Rue de la d'Anjou, Paris.
M. Émile Cacheux, 25 Quai St., Michel, Paris.
*M. Émile Trelat, Paris.
M. F. Buisson, Bd. 163 Montparnasse, Paris.
M. Émil Levasseur, 24 Rue Monsieur le Prince, Paris.
M. Arthur Raffalovich, 19 Avenue Hoche, Paris.
M. Pierre Claudio Jannet, 22 Rue Oudinot, Paris.

In Italy.

Signor Martino Beltrani-Scalia, Rome.
Prof. C. F. Gabba, Pisa.
*Prof. Alberto de Errea, Cavaliere della Corna d' Italia, Venice.

In Belgium.

*M. P. Buls, Brussels.
M. Van de Rest, Brussels.

[The names on this list marked with a (*) are those of persons who cannot be found by post-office officials.]

LIST OF ANNUAL MEMBERS, 1902.

[NOTE.— With reference to this enrollment some explanations are essential, and they are as follows:—

The "National Institute of Arts and Letters," organized under the auspices of the American Social Science Association, but now an independent body, still retains a certain connection with the Association in the form of Associate Memberships. The following clauses from vote passed at the Saratoga meeting of the Association define the existing status:—

Voted, That the members of the Institute be *ipso facto* associate members of the Association in return for the courtesy of the Institute in making members of the Association associate members of the Institute.

In the list subjoined, such associate members are marked with a *star*. In the matter of academic titles, such only are given as are known. Members are earnestly solicited to communicate with the editor at once respecting academic titles, and also to correct any errors which may be found upon the roll. All resignations should also be promptly reported to the permanent address of the General Secretary, 129 E. 15th St., New York City.]

*Abbey, Edwin A., Fairford, England.
Abrahams, A., 800 St. Marks Ave., Brooklyn.
Adams, B., 23 Court St., Boston.
Adams, Elbridge T., 911 Wilder Bldg., Rochester, N.Y.
*Adams, Henry, Washington, D.C.
*Adams, Herbert, LL.D., Johns Hopkins University, Baltimore, Md.
Adams, John L., 24 E. 46th St., New York.
Adams, Oscar Fay, 41 Marlboro St., Boston.
Addam, Miss Jane, Hull House, Chicago.
Ade, George, the *Record*, Chicago.
Agar, John E., 31 Nassau St., New York.
Aiken, W. M., St. James Building, Broadway, New York City.
*Alden, Henry M., care of Harper & Brothers, New York.
Aldrich, Charles F., Home Insurance Building, Chicago.
Aldrich, Nelson W., Providence, R.I.
*Aldrich, Thomas Bailey, Boston, Mass.
Aldridge, George W., Rochester, N.Y.
Alexander, E. P., Augusta, Ga.
*Alexander, John W., 120 Broadway, New York City.
*Allen, James Lane, 66 5th Ave., New York.
Allen, Hon. John B., 505 Harvard Ave., Seattle, Wash.
Allen, S. H., 501 Jackson St., Topeka, Kan.
Allen, Thomas, 12 Commonwealth Ave., Boston.
Allen, Miss Viola, 27 W. 93d St., New York City.
Allen, William A., Madison, Neb.
Allison, Hon. W. B., 1124 N St., Washington, D.C.
Ames, Gen. Adelbert, Lowell, Mass.
Ames, James Barr, Cambridge, Mass.
Amory, Robert, M.D., 279 Beacon St., Boston,
Anderson, E. Ellery, 27 William St., New York.
Anderson, Rev. Joseph, D.D., Waterbury, Conn.
Anderson, Warren E., Pensacola, Fla.
Anderson, Winslow, M.D., 1220 Sutton St., San Francisco.
Andrews, Charles, Syracuse, N.Y.
Andrews, Hon. Charles B., LL.D., Litchfield, Conn.
Angell, Henry C., 16 Beacon St., Boston, Mass.
Anthony, Prof. Wm. A., Cooper Union, New York.

Archer, Frederick, Carnegie Institute, Pittsburg, Pa.
Ashley, Prof Clarence D., LL.D., N.Y. Un. Law School, New York.
Ashley, George Hall, 15 W. 22d St., Indianapolis, Ind.
Ashmore, George C., M.D., 794 Republic St., Cleveland, Ohio.
Atwood, Charles E., M.D., "Bloomingdale," White Plains, N.Y.
Atwood, J. M., 159 Meigs St., Rochester, N.Y.
Audsley, G. A., Bowling Green Office, 11 Broadway, New York.
Austen, Peter T., 218 St. Johns Pl., Brooklyn.
Avery, A. C., Morganton, N.C.
Avery, Edward H., Auburn, N.Y.
Ayer, Benjamin F., 99 Pine St., Chicago.
Ayers, Howard, University of Cincinnati, Cincinnati, Ohio.
Bacon, Edwin M., 6 Beacon St., Boston.
Bacon, Henry, 12 bis Rue Vineuse, Paris, France.
Bacon, Robert, 33 Wall St., New York City.
Baker, David S., 170 Westminster Pl., Providence, R.I.
Baker, Prof George S., 190 Brattle St., Cambridge.
Baker, Hon. John H., Indianapolis, Ind.
Bakewell, Prof. Charles Montague, Bryn Mawr. Pa.
*Baldwin, Hon. S. E., LL.D., New Haven, Conn.
Baldwin, William H., Jr., 32 Nassau St., New York City.
Baldwin, Wm. D., 25 Grant Pl., Washington, D.C.
Ball, Thomas, 29 S. Mountain Ave., Montclair, N J.
Band, A., Washington, D.C.
Bangs, John Kendrick, Yonkers, N.Y.
Barber, Walter L., M.D., Waterbury, Conn.
Barclay, Shepard, 705 Olive St., St. Louis, Mo.
Barr, Mrs. Amelia E., Cornwall-on-Hudson, N Y.
Barrows, Charles Clifford, M.D., 8 W. 36th St., New York.
Bartholomew, Hon. J. M., Bismarck, N.D.
Bartlett, Franklin, 41 Park Row, New York,
Bartlett, John, 165 Brattle St., Cambridge.
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Baylor, Mrs. Frances C., 313 Hall St., West Savannah, Ga.
Beach, Mrs. H. H. A., 28 Commonwealth Ave., Boston.
Beach, H. H. A., M.D., 28 Commonwealth Ave., Boston.
Beard, Daniel C., 204 Amity St., Flushing, L.I.
Beates, Henry, Jr., M.D., 1504 Walnut St., Philadelphia.
Beaver, Hon. James A., Bellefonte, Pa.
*Beckwith, J. Carroll, 58 W. 57th St., New York City.
Bell, Clark, M.D., 39 Broadway, New York.
Belmont, August, 32 Nassau St., New York City.
Benedict, E. C., Greenwich, Conn.
Benedict, Frank Lee, 1514 H St., N.W., Washington, D.C.
Benedict, George Grenville, Burlington, Vt.
*Benson, Frank W., Salem, N.H.
Bentley, Edwin, M.D., 617 Main St., Little Rock, Ark.
Bergen, Van Brunt, Shore Road and 77th St., Brooklyn.
Berger, Victor L., 1229 Second St., Milwaukee, Wis.
Bernays, August C., M.D., 3623 Laclede Ave., St. Louis.
Betts, B. Frank, M.D., 1609 Girard Ave., Philadelphia.
*Bigelow, Hon. John, Highland Falls-on-Hudson, N.Y.
Bigger, L. A., Hutchinson, Kansas.
Bingham, E. F., 1907 H St., N.W., Washington, D.C.
*Bird, Arthur, Berlin, Germany.
Bishop, J. Remsen, 117 Huntington Pl., Mt. Vernon, Cincinnati, Ohio.
Bispham, David S., Players' Club, New York.
Bixler, James W., D.D., 5 Broad St., New London, Conn.
Bjorksten, Meodove, 95 Carnegie Hall, New York City.
Blaikie, William, 206 Broadway, New York.
Blair, James L., Union Trust Building, St. Louis, Mo.
Blake, Clarence John, M.D., 226 Marlboro St., Boston.
*Blashfield, Edwin H., 48 W. 59th St., New York.
Blatchford, Hon. E. W., La Salle Ave., Chicago.

Blenner, Carle J., 58 W. 57th St., New York.
Blount, Henry F., The Oakes, Washington, D.C.
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OUR DIPLOMACY WITH REFERENCE TO OUR CONSULAR AND DIPLOMATIC SERVICE.

ADDRESS OF THE PRESIDENT OF THE ASSOCIATION, HON. OSCAR S. STRAUS, LL.D., OF NEW YORK CITY.

[Read Monday evening, April 21.]

The dominant purpose of the first period of our diplomacy extending from the end of the Revolution to the termination of the war of 1812, until the conclusion of the Treaty of Ghent in 1814, was to establish by treaties what had been achieved by war, to obtain recognition upon equal terms in the family of nations.

That of the second period was to safeguard our political existence as a sovereign and independent nation on the American continent from threatened aggressions and intervention on the part of European powers. This period culminated in 1823 by the promulgation of the Monroe Doctrine.

The third period extended from that time until the end of our Civil War. This was the preservative or surgical period of our development, when the nation submitted to the bloodiest and most serious operation to eradicate the cancer of slavery which had eaten into its very vitals, the roots of which extended back prior to the formation of the Constitution. From this period on we became more assertive of our rights internationally and on this continent, beginning with our demand for the termination of Maximilian's rule in Mexico, which rested on French bayonets for its support, and our insistence upon Great Britain making reparation for her violation of the laws of neutrality during our Civil War, by her adjusting the "Alabama" claims.

The next, or fifth, period was characterized by a policy which was both vigorous and aggressive, beginning with Cleveland's Venezuelan message and ending with the Spanish War. We have now arrived at an offensive as distinguished from a defensive policy. It is the commercial stage, whose aim it is to reach out for our share of the world's commerce, to secure an open door with European nations in Asiatic countries and procure

equal rights and facilities for our commerce seeking the markets of the world.

This diplomatic-commercial stage is a natural development, and in modern times was first inaugurated by Holland, subsequently vigorously developed with army, fleet, and diplomacy by Great Britain, and is to-day pushed forward with aggressive vigor by Germany. This stage is international in its fullest application, and has some aspects of resemblance with the earliest stages of our foreign policy, in that it is commercial, but with this difference,—the goal is beyond, and not within, the United States. In the first stage after we had achieved our independence "there existed at that time in Europe," as Trescot points out,* "an exaggerated idea of the immediate importance of American commerce. . . . Situated as were the European States, they were not always the arbiters of their own interests; and there existed on their part a strong disposition to apply the rule of their own conduct to the new republic and compel a participation in a common fate." The purpose of our diplomacy during this period was to resist this pretension; and it was in part accomplished by our first treaties with England, Spain, and France, and more perfectly by our expansion diplomacy through the purchase of Louisiana and Florida, and subsequently by the annexation of Texas and the purchase of Alaska. A wide difference, however, is to be noted between our expansion policy on this continent ending with the Alaska purchase and that which has since taken place beyond the limits of the continent. In the former plan of expansion the purpose was to free ourselves from European interests by getting rid of neighboring and contiguous European possessions: whereas in the expansion which has taken place since our war with Spain, especially since the acquisition of the Philippines, we have not only assumed new and most troublesome governmental problems and burdens, but have also acquired new and strange neighbors. We have entered in the fullest sense into the arena of world politics, and we have departed from that policy of American concentration and from the security afforded by our isolation from the shifting and perplexing phases of Asiatic and European conflicts and wars.

Aside, however, from our recent territorial expansion and entirely apart from it, a natural and peaceful expansion has taken

* "The Diplomatic History of the Administrations of Washington and Adams," by William Henry Trescot, pp. 2, 4.

place, due not to our prowess in war, but to our natural advantages, and to American skill and enterprise as a producing and manufacturing people. This is an aggressive expansion; for we go out to meet the nations of the world in commercial rivalry, not only in neutral zones, but also in their home markets. · We are beginning to hear more and more, and will hear more and more, of reciprocity and retaliation and commercial union on the part of European countries against us or rather against our export products.

Thus far, under the guidance of a wise, far-seeing, and tactful diplomacy, which has characterized the administration of Secretary Hay, we have won signal victories and open doors in a true spirit of amity and friendship. But the time has now arrived when, in the language of President McKinley in his last message to his countrymen: "The period of exclusiveness is past. The expansion of our trade and commerce is the pressing problem. Commercial wars are unprofitable. A policy of good will and friendly trade relations will prevent reprisals. Reciprocity treaties are in harmony with the spirit of the times: measures of retaliation are not. If, perchance, some of our tariffs are no longer needed for revenue or to encourage and protect our industries at home, why should they not be employed to extend and promote our markets abroad?"

With the rapid growth of our foreign commerce due to many causes, the country is held bound and suffering by the narrow views and the selfish interests which lay at the basis of much of our tariff legislation; and we shall probably have to wait for such legislation until the very contingencies happen of which President McKinley wisely forewarned us, and which it was his purpose to forestall and prevent. It is one thing to let loose the greed and selfishness of commercialism, and quite another to curb its powers in the interest of public policy and national honor, as is the case with our unfulfilled moral obligations to Cuba. When the tariff walls are too high, they obstruct egress as well as ingress. Besides, they become the bulwark for the propagation and multiplication of trusts to raise prices as distinguished from economical combinations which reduce the cost of production. Aside from this, there is the all-important domestic problem, the basis of all commerce,— the harmonious relations between capital and labor, or between employers and workmen. The lack of that

harmony in Great Britain and in other countries has contributed more than any other cause to the lessening of commercial prosperity. The phrase, "Trade follows the flag," is attractive on the stump, but, in the light of experience, false. Trade follows the course of least resistance. The obstacles may be natural, as, for instance, the advantages one country possesses over other countries in respect to raw material facilities for manufacture, the skill and intelligence of workmen, etc. They may be artificial, as in the case of excessive tariffs, or the lack of banking and transportation facilities, or of information as to the special tastes and requirements of the importing country. Experienced consuls, familiar with the trade of the country and districts wherein they reside, are the official commercial pickets and outposts, and of vast advantage in directing the channels of trade. Rapidity of communication brought about by steam navigation and by the telegraph have increased the value as well as the scope of diplomatic functions, and of consular relations to trade expansion; and every year it is becoming more apparent that we must systematize our foreign service, both diplomatic and consular, upon a common-sense basis, where appointments in the first instance are made for fitness, and not for favoritism, and where promotions and a fixed tenure dependent upon capacity and good behavior reward efficient services. Silas Larrabee says in his characteristic phrasing: "Ameriky is up agin one of them things they call dilemmies. We call ourselves a world power: we act like a miser'ble narrer-minded, short-sighted people. If we're goin' to keep on in the world-power business, hadn't we better put on some world-power clothes, and take on world-power ways?"

The evils of our present method, or rather lack of method, of appointment, based almost entirely on the spoils system, is less apparent, in the very nature of things, when one party remains in power for several successive administrations than when, through the shifting of home politics, administrations alternate, as was the case between 1885 and 1897, under the successive administrations of Presidents Cleveland, Harrison, Cleveland, and McKinley, which period has not inaptly been termed the "transit period," so far as concerned our foreign service, in that by far the larger number of our foreign officials, constituting our diplomatic and consular officers, were going and coming from every quarter of the globe, first the Republican appointees returning and the

Democrats taking their places, then the Democrats returning and the Republicans taking their places; and again the Republicans returning and the Democrats taking their places, and, finally, the Democrats returning and the Republicans taking their places. It was not only felt, but quite openly expressed, at several foreign capitals that it was hardly worth while to enter into any serious negotiations with us; for just about the time an agreement could be reached our representative would be recalled. At other capitals, negotiations that were not agreeable to the government to which our diplomatic representatives were accredited were purposely protracted with the expectation, as our national election was approaching, that a new diplomatic representative, entirely unfamiliar with the negotiations, would be sent to replace the former one.

I know it has been argued, and with some apparent force, that, notwithstanding the spoils system, our diplomacy has been in the main successful; but a critical examination of our successes will reveal that even our successes are arguments for a trained and fixed service. The successes that distinguish the first period of our history were achieved before the spoils system had arisen, during the Confederation and under the administrations from Washington to John Quincy Adams, when our best-trained and best-qualified men in the country were sent abroad, irrespective of partisan considerations. We naturally recall the names of Franklin, Adams, Jefferson, Jay, Marshall, Livingston, Monroe, and others, whose services in behalf of our country are recorded in every school history. But even during this period we must not forget that Napoleon served us as our greatest diplomat, for, as Trescot says: "Thus the treaty with England was yielded to the necessities of the conditions of hostility between England and France; the treaty with Spain was the result of the changed attitude of that power toward England on the one side and France on the other; and the treaty with France depended upon the special relation which France at the moment wished to assume, for her own purposes, towards the other powers of Europe."* Other notable instances during later periods may be cited, when there was immediate and pressing need for "the right man in the right place," as was the case when Lincoln sent Charles Francis Adams to London during the Civil War. The second reason for our

* Trescot, id., p. 278.

diplomatic successes, even after the rise and growth of the spoils system, is that these successes in the main were not attained by our diplomatic representatives abroad, but because, due at times perhaps to the very defects of our system, the negotiations were transferred to Washington and conducted by the Secretary of State in person, as was notably the case under Secretaries Webster, Seward, Fish, and Hay.

The third reason for our diplomatic successes, to employ a Hibernicism, is because they were not diplomatic successes at all, but due to another important branch of our government, wherein such a system as I refer to obtains in the fullest sense, and which system has never been invaded by the spoils system, and seldom even by favoritism: I refer to the United States Navy. The employment of the navy in diplomatic missions is, to say the least, not only very expensive, but hazardous and grave in its possible consequences. We need not cite the destruction of the "Maine" in the harbor of Havana as an illustration of sending men-of-war on such errands, which missions, even in times of irritated relations, are euphemistically designated "to keep up the usual courtesies of friendly intercourse."

That the navy sent on diplomatic missions has time and again in our history achieved signal successes is largely due, aside from the effective argument of force, to the fact that our commanders, commodores, and admirals grew up in the service for which they were specially trained, and were frequently better trained even in international law and in diplomacy than our diplomatic representatives. In naval diplomacy we naturally recall Commodore Decatur's negotiations with the Barbary States, and Commodore Perry's success in negotiating our first treaty of amity and commerce with Japan, and Admiral Shufeldt, who negotiated our first treaty with Corea. The most notable diplomatic success achieved by us during the last half-century was the treaty of Washington (May 8, 1871) for the adjustment of the "Alabama" claims and all the other unsettled questions between our government and Great Britain. Besides providing for the settlement of claims growing out of Great Britain's breach of neutrality during the Civil War and laying down three most important rules of neutrality, it created "the most important arbitration in which the United States ever engaged, the most august and impressive ever held in the world, and the most lasting in its influence on other

nations." * The negotiations which ultimately resulted in success, after the failure of the Johnson-Clarendon treaty and the recall of Minister Motley, were conducted in Washington under the immediate guidance of Secretary Fish, and under the policy approved as it progressed by President Grant. The interesting details leading up to these negotiations, the divergent views and conflicts between Mr. Sumner, the chairman of the Committee of Foreign Affairs of the Senate, and the administration, have recently had new light thrown upon them by Charles Francis Adams in his learned address before the New York Historical Society.†

The Court of Arbitration provided for by the treaty convened in Geneva on the 15th of December, 1871. Count Sclopis, who was unanimously chosen president of the tribunal, addressing his colleagues, congratulated them on the felicitous occasion upon which they were for the first time engaged in applying the austere and calm rules of law to the solution of burning questions. He said "the meeting of this arbitration signalizes a new policy, which was henceforth to govern the dealings of civilized nations, that the United States and the United Kingdom were giving an example to other nations which would be prolific of best results."

There are other reasons, besides those mentioned, why important negotiations affecting our country, even under the most approved diplomatic service, must necessarily be transferred to Washington. Because under the Constitution a two-thirds vote of the Senate is required for the ratification of a treaty, in order to insure favorable action by this co-ordinate branch of the treaty-making power of our government, it frequently becomes expedient for the Executive, through the Secretary of State or directly, to confer with the Senate during the pendency of negotiations. The most recent example of the expediency of such a course arose in the case of the first Hay-Pauncefote treaty, which failed of ratification by reason of various amendments; and the success which attended the second treaty, which had been framed after consultation with the leading senators, and which was promptly ratified. It often requires as much, if not more, diplomacy on the part of the President and Secretary of State to secure the co-operation of the Committee on Foreign Affairs in the Senate than to perfect negotiations with the foreign state. Senator Lodge, in a learned

* John W. Foster's "Century of American Diplomacy," p. 424.

† "Before and after the Treaty of Washington: The American Civil War and the War in the Transvaal," Charles Francis Adams (1902).

article, "The Treaty-making Powers of the Senate," * summarizes sixty-eight treaties which have been amended by the Senate, and afterwards ratified, but what number have been negotiated and not ratified is not stated. The latter class is large, and represents, doubtless, as much diplomatic ability and skill on the part of our various Secretaries of State and of our ministers of foreign courts as those which were ratified. The discussion of the merits of such treaties, and the reasons that contributed to their rejection, would disclose additional and striking reasons for the removal of our foreign service beyond the shifting phases of politics. Under our present system, when the executive branch of the government and the Senate are not in harmony, or, it may be, when the President and the chairman of the Committee on Foreign Affairs of the Senate are not in accord, the treaty-making powers of the government are suspended. This was the case under President Grant's first administration, when the Senate, under the lead of Senator Sumner, rejected the treaty for the annexation of San Domingo as well as the Johnson-Clarendon treaty; and it was also the case in a degree under both Cleveland's administrations. For it must be remembered it only requires a one-third vote in the Senate to defeat a treaty; and, when personal jealousies and animosities are added to party divisions, these can readily array in opposition the required one-third vote and suspend the treaty-making power. Because, for reasons growing out of our federated system, our Constitution makes the Senate a co-ordinate member with the Executive in treaty-making is an added reason why our diplomatic service should be placed beyond partisan control, on the same footing with our naval and military service as to tenure. In all governments the legislative branch reflects popular excitement and passion. That such is the case in legislation and in matters affecting internal affairs is to be deprecated, but is often unavoidable; but, when these violent and temporary agitations are projected into our foreign relations, it is particularly unfortunate. At times the situation becomes critical, when with a change of administration it leads to the recall of our diplomatic representative and replacing him by a new man lacking both diplomatic experience and acquaintance with the officials, and the internal affairs of the government to which he is accredited. This is precisely what has happened on more than one occasion, just at the time when the

* *Scribner's Magazine*, January, 1902.

relations of the two countries were most strained, and when trained experience, which is always desirable, would have been of special value and importance. That this might at times happen under a regulated diplomatic system is true; but, instead of being the rule, it would be the exception, and then only for good cause, and not as now almost always without cause.

That we have in this country so long delayed in taking our foreign service out of politics is in part also due to the fact that every President has, to a more or less degree, resisted the pressure from the spoilsmen, and used his own judgment in making the more important appointments. This is more true in respect to diplomatic appointments than to consular offices. I have endeavored to learn the arguments against the reform of the diplomatic and consular service, and against such measures as the Lodge bill now before Congress, but have been unable to find them. The fact is, the opposition is not founded on argument, but on patronage. Patronage does not yield to argument, but only to pressure.

I believe the time is not distant when every new market gained by our expanding commerce will accentuate that pressure, and that the reform, so far as concerns our consular service, cannot be much longer resisted.

The need for the reform of our consular service has been felt for many years. Even so far back as 1833, President Jackson, evidently seeing the evils of that spoils system to which he had given such an impetus, endeavored to check it in our foreign relations. In his fifth annual message he said: "I deem it proper to recommend to your notice the revision of our consular service. This has become an important branch of the public service, inasmuch as it is intimately connected with the preservation of our national character abroad, with the interest of our citizens in foreign countries, with the regulation and care of our commerce, and with the protection of our seamen. At the close of the last session of Congress I communicated a report from the Secretary of State upon the subject, to which I now refer as containing the information which may be useful in any inquiries that Congress may see fit to institute with a view to a salutary reform of the system."

It is not my purpose here to enter into the details of the reforms: these are very clearly understood, and have been variously formulated in bills presented in Congress. This much, however, I

wish to say: we should make our diplomatic system co-operative, which at present it is not. By that I mean there should be a system such as other nations have, whereby every head of mission is advised of all negotiations pending at home and at other capitals affecting the United States, so as to be on the alert, and be mutually helpful with such information as is frequently obtainable at capitals other than the one where the negotiations are pending. The British Foreign Office does this by a system of blue-prints, or confidentially printed sheets set up in the Foreign Office, and regularly forwarded to its heads of missions throughout the world. This is at most only a detail, but, from my limited experience, none the less important.

Another suggestion I would make in this connection is that we should adopt the system of commercial attachés,— that is, commercial experts attached to our principal diplomatic posts,— to study and report upon the industrial development and commercial trend of affairs in foreign countries. It is true, we have an excellent system of consular reports; and they are very helpful. These should be continued, and should supplement the investigations by the commercial attachés, who should invariably be high-class experts. But, so long as the spoils system dominates, we could not hope that they would escape the defects of partisan appointment and uncertain tenure.

General Boulanger, who was sent here to represent the French army and government during our Yorktown celebration in 1876, told me he was invited to visit our fortifications. While in California, General Sherman showed him some of our fortifications on that coast, and asked the general what he thought of them. Boulanger said he found the fortifications very antiquated, but that he replied to General Sherman they were the best in the world, because, he added, no country has such magnificent ditches as the Atlantic and the Pacific. I am not competent to pass an opinion whether our fortifications are still antiquated; but I do know that the peaceful arm of our government, the diplomatic and consular system, which often serve as do the ditches, and as guards against making enemies, is antiquated and badly needs modernizing, and that it can be done with little or no added expenditure.

In concluding these observations on our diplomacy, which, from the nature of the subject, had to be desultory, I will quote

from that distinguished authority on international law, Professor John B. Moore. He says: "With the growth of power and the extension of boundaries there has come an increase of national responsibilities. . . . It remains for us to carry forward, as our predecessors have carried forward, the great work thus begun, so that at the close of another century the cause of free government, free commerce, and free seas, may still find in the United States a champion." *

* "A Hundred Years of American Diplomacy," by John Bassett Moore (1900).

I. DEPARTMENT OF SOCIAL ECONOMY.

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1. THE TRAGEDY OF INDUSTRY.

ADDRESS BY JOHN GRAHAM BROOKS, OF CAMBRIDGE, MASS.

[Read Tuesday morning, April 22.]

When Employers' Liability was first submitted to serious and competent discussion in Germany thirty years ago, it was estimated that "forty thousand persons were more or less crippled each year in the various industries." Now that her accident insurance is thoroughly organized, so that all accidents are known, it shows a list of nearly two hundred and fifty thousand, more than six times the original estimate. I make here no plea for the German state insurance of accidents, but use the illustration to show how vast is the list of fatalities, when the full fact is brought out. One single industry in the United States — railroad transportation — killed last year more than eight thousand persons, while its accidents are above sixty thousand. This gives a hint of the mutilation that goes on in our midst with appalling regularity. We know the casualties of the railroad because the record has been forced into publicity, yet this is not the most dangerous occupation. If we knew the whole story of maimed and disabled life in other forms of transportation, in machine-shops, mills, factories, and mines, the result would startle us as much by its magnitude as by its deadly regularity. If we could know the result in the wood industry alone, from the lumber camp through the sawing-mill to the finished product, we should be amazed at the accompanying cost to life and limb.

Our Employers' Liability Acts are now so grotesque in their incompleteness that the mass and the significance of this injured life are largely hidden from us. Yet it is not primarily the bulk of industrial accidents that I venture to call the tragedy of industry. It is rather the incoherence, the injustice, and the crudeness with which we attempt to meet our responsibilities toward this mass of misfortune. In Chicago I saw the fall of a huge iron beam in one of the great buildings. It broke the arm of a Swedish laborer in three places. A telephone message brought the lawyer of a pri-

vate insurance company at once to the spot. He took the victim home in a carriage, and there persuaded him to accept a hundred crisp one-dollar bills as recompense for the hurt. The Swede was told that, if he did not take the money, but brought a suit, his own lawyer would get the money. The man now three years later is crippled, and eighty-seven of his hundred dollars went to the doctor.

In a Pennsylvania coal mine I was talking to the foreman at the top of a breaker, when a man came to tell him that a workman had fallen from some scaffolding and was "very bad hurt." This man was sent to the local hospital, where he got free treatment. I went to the superintendent of the mine for further information. He told me, "No, I don't think there is the slightest chance of his getting anything further, however badly he is hurt."

In January a man in the employ of the Boston Elevated Railroad was adjusting a shoe upon the wheel of a car that had been run into the pit for inspection. While at his task, the car was started through the carelessness of another employee. The man's leg was crushed beneath the car, so that a double amputation was necessary. After a year and a quarter and the purchase of two artificial legs, the man is for the first time able to do light work. The fuse connecting the two motors was on at the time. It is said against him that he might have thrown off the fuse; but he had worked in this way for two years, and never had had a word of instruction about touching the fuse. Every employer for whom this man has worked gives him a recommendation of the most unqualified approval. He is not only strictly temperate, but does not even smoke. He is thirty-five years of age, with a wife and three children. He has saved his money, paying in full for his small house and lot. The men about the car station say freely that the man in charge of the controllers was a drinking man and wholly at fault. Near the limit of the time before which a complaint must be lodged, the injured man had not been approached by any agent of the corporation. It is the openly expressed policy of the corporation to make use of every known legal technicality to prevent the man from getting anything, and thus punish him for taking the matter into his own hands. Especially will every attempt be made to prevent the case from coming before a jury. The doctrine of "common employment" will be used against him, and the company seeks to escape responsibility by throwing the blame upon a fellow-servant. I have submitted these

three cases to a lawyer of extensive practice in liability cases. He tells me they are not exceptional, but come with varying degrees of injustice constantly under observation. These instances are here adduced because they came under personal observation, and because they serve fairly for the purpose of illustration. All attempts to defend or extenuate such methods of industrial recompense on the ground of "assumption of risk" by the workman, "common employment," "contributory negligence," or that "wages cover such hazards," have become the curiosities of a casuistry which baffles all students and disinterested critics.

Having some ten years ago to prepare a government report on one phase of this subject in Europe, I have since been led to ask a large number of American lawyers of recognized distinction what their opinions were about our Employers' Liability laws. It is very gratifying to the student untrained in legal technicalities to find that many of our ablest attorneys are among the most pitiless censors of these laws in the United States.

It is frankly admitted by scores of these men that, while the assumption of risk, common employment, contributory negligence, had a natural origin and place in more primitive forms of industry, these doctrines are grossly inadequate as applied generally to the great industries of modern times. England alone in Europe permitted the employer to escape responsibility by throwing the blame for accidents upon a fellow-laborer. In the thorough work of the Royal Commission in 1894 this doctrine of common employment so tenaciously held by us is pronounced a gross anomaly and injustice. The words are: —

> The doctrine is an exception to the general rule; is modern judge-made law, implies a contract founded on a legal fiction not in accordance with fact, has been pushed to extreme length by the judges forcing and straining the meaning of the term "common employment," and in practice leads to gross anomalies and injustice. The little master who does the work himself is responsible: the large employer by delegating authority escapes responsibility. The stranger who is injured by the employer's servant has his remedy: the workman has none. The law, therefore, is an unfair law, operating oppressively against workmen as a class.

This type of legislation began in England in 1837, in a case, dreary by much quoting, wherein the judges decided that a butcher's laborer could not recover from his employer because a fellow-

laborer was at fault. So eminent a lawyer as Sir Frederick Pollock says, "I think the doctrine of the American and English courts is bad law as well as bad policy." Our own liability acts are probably no whit more developed than the English Act of 1880,* which Mr. Asquith called "a scandal and a reproach to the legislature,— an elaborate series of traps and pitfalls for the unwary litigant and producing litigation which, in proportion to its difficulty and cost, is absolutely barren of result." Lord Salisbury and Mr. Chamberlain have both used language scarcely less severe. When the discussion began in the House of Commons twenty years ago, scores of able men hotly defended these laws. It is now said that no first-rate man in the House will even attempt a defence. At the International Congresses for the discussion of accident insurance the part which "common employment" has played in English legislation has invariably elicited surprise and disapproval. A common explanation is that this doctrine would never have struck root there but for the unhappy confusion of household servants with those employed in the industries.

The difficulties in fixing the blame under modern industrial conditions for a large majority of accidents is so impossible that not even the roughest justice is attainable. In our blind scramble for a verdict, litigation increases in mass and in uncertainty, so that it is scarcely less vexatious to the employer than to the employee.

Twenty years' experience under the German Act has made it clear that more than half of the industrial accidents are neither the fault of the employer nor of the employed. They come with the regularity of the tides, and can be dealt with by exact actuarial methods. This evidence had a powerful influence in England in their decision to stop this hunt for impossible personal blames, and put this whole matter where it belongs, upon a basis of carefully regulated insurance. The long and searching discussion of this problem in eight countries is practically a unit upon this point. The expense of accidents (barring cases of gross negligence)

* Professor James Mavor, in his report to the legislature of Ottawa, 1900, says of the English Act of 1880: It modified the doctrine of common employment; but it retained the principle of liability being attached to negligence, if a workman is injured by (*a*) a defect in the machinery, which was caused or remained undiscovered through the negligence of the employer or his agents, or (*b*) by the negligence of the superintendent of the work, or (*c*) by the negligence of the person to whose orders the workmen had to conform, or (*d*) by an act or omission of any person done under any improper by-law of the employer, or (*e*) by the negligence of the person having control over any signals, etc., as in the case of a railway. Negligence must be proved. Notice must be given within six weeks by the servant.

should, like insurance, be thrown upon the costs of the business. The general body of consumers must then in the long run, when readjustments are made, pay the bill for the disabilities incident to production. This ends once for all a world of petty personal bickering that is wasteful from every point of view.

We recognize the evil of allowing an army of small attorneys to hunt up and work up indiscriminately soldiers' pension cases. The working up of accident cases under the law as it now stands is a far graver evil still. The corporation has to fight for its life against an army of men and women who are led to exaggerate their accident claim into every excess of blackmail. In turn the corporation cannot protect itself without constant and flagrant injustice against its servants. To show the pass to which a great and necessary business is reduced, let me read two or three articles from an application for a situation which those have to sign who ask for a job. The business is one of our large express companies. That the courts may protect the injured workman in spite of the fact that he has "contracted out" does not make the purpose of the company, as here expressed, less humiliating from the point of view of fair and just dealing. The articles are as follows: —

Whereas I, the undersigned, have entered, or am about to enter, the employ of the , and in the course of such employment may be required to render services in the care, carriage, or handling of merchandise and property in course of transportation by cars, vessels, and vehicles belonging to the different railroad, stage, and steamboat lines upon which the Company relies for its means of forwarding property delivered to it to be forwarded;

And whereas such Express Company, under its contracts with many of the corporations and persons owning or operating such railroad, stage, and steamboat lines, is or may be obligated to indemnify and save harmless such corporations and persons from and against all claims for injuries sustained by its employees,—

Now, therefore, in consideration of the premises and of my said employment, I do hereby assume all risk of accidents and injuries which I shall meet with or sustain in the course of my employment, whether occasioned or resulting by or *from the gross or other negligence* of any corporation or person engaged in any manner in operating any railroad or vessel or vehicle, or of any employee of any such corporation or person, or otherwise, and whether resulting in my death or otherwise.

And I do hereby agree to indemnify and save harmless the of and from any and all claims which may be made against it at any time by any corporation or person under any agreement which it has

made, or may hereafter make, arising out of any claim or recovery upon my part, or the part of my representatives, for damages sustained by reason of my injury or death, whether such injury or death result from *the gross negligence of any person or corporation* or of any *employee of any person or corporation, or otherwise.*

And I hereby bind myself, my heirs, executors, and administrators with the payment to such Express Company, upon demand, of any sum which it may be compelled to pay in consequence of any such claim, or in defending the same, including all counsel fees and expenses of litigation connected therewith.

I do further agree that in case I shall at any time suffer any such injury, I will at once, *without demand, and at my own expense*, execute and deliver to the corporation or persons owning or operating the railroad, stage, or steamboat line upon which I shall be so injured, a good and sufficient release, under my hand and seal, of all claims, demands, and causes of action arising out of such injury, or connected with or resulting therefrom.

This shows the lengths to which a business may be driven by having to defend itself against the abuses that gather about an antiquated legislation.

We thus have, in this larger history of the Employers' Liability, an attempt to fix the blame for accidents upon the individual, with responsibility resting upon the laborer to prove his case. This narrow and unfair view slowly gives way before experience and discussion, the burden of proof being, in an ever-increasing number of cases, thrown upon the employer. Step by step with this tendency the employer is forced to insure himself against all accidents by various forms of insurance, with pecuniary responsibilities proportioned to the inherent risks of the business. In the place of individual blame the general principle of trade responsibility has become the fixed and recognized fact in the best European legislation. Mr. Willoughby, in his admirable book on "Workingmen's Insurance," at the end of the chapter on this subject in the United States, puts the case of our own backwardness in these words: —

The United States are thus still in that primitive stage where a solution is sought in the timid modification of the doctrine of common employment, of what constitutes negligence, and other subtilties of the law. They are thus attempting a method of reform long since abandoned by European nations as one which not only does not do justice to the workingman, but is thoroughly inadequate to solve the difficulties of the question. It would be difficult to think of another field of social or legal reform in which the United States is so far behind other nations.

The most depressing feature of the situation lies in the fact that the very principles involved in this gradual evolution from the limited liability of employers to that of the compulsory indemnification by them of practically all injured employees are as yet not even comprehended in the United States. Evidently, it is useless to expect any decided legislation until the people generally are made to see the justness and correctness of the position for which we are contending, and which has so recently been assumed by Great Britain. The first step, therefore, consists in the education of public opinion. This once accomplished, legislation will inevitably follow.

2. THE ENGLISH WORKINGMEN'S COMPENSATION ACT.

BY A. MAURICE LOW, ESQ., OF WASHINGTON, D.C.

[Read Tuesday morning, April 22.]

The individual is nothing, society is everything; but society for its own welfare and happiness must protect the individual and conserve his rights. That doctrine is neither socialism, nor individualism, nor collectivism. It is the best of all that is good in all three. It is the broad, elevating humanity of to-day.

Between the government of Plato, where government was to be little better than a magnified policeman, where government would preserve order and collect the taxes, but do little else, and the anarchy of Rousseau, where every man was to govern as his will moved him, is the chasm of brutality and ignorance and indifference of the centuries that the intelligence and keen appreciation of the wants of the many and the broad humanity of man for man began to bridge, which the twentieth century, with its sympathy and constant striving for a more perfect state, will complete. Society to-day is no longer content to regard government — that is to say, its executive officers and agents, for government is simply the convenient machinery to execute the will of the people — as merely the policeman and the tax-gatherer. It invests it with higher, nobler, and broader functions. Government must not only collect the taxes and punish the guilty: it must protect the weak, succor the distressed, extend the friendly hand to all those who are suffering in mind and body. It must inspire and uplift, it must stimulate the timid and curb the audacious. It must be to them what Christ was to the multitude; and, even as Christ said, "Come unto me, all ye that labor and are heavy laden, and I will give you rest," so government must be to them a haven of refuge and a tower of strength.

When the state contents itself with merely preserving order and collecting taxes, it has performed only a fraction of its duties and responsibilities; and it must suffer for its sins of omission. When

the state needlessly interferes with its citizens, when, as in an oligarchy or despotic monarchy, it enacts laws solely for the benefit of the favored few, it has been guilty of sins of commission; and the punishment is usually rebellion and revolution. Between the two, in a republic or an enlightened monarchy, is the happy mean. There the governing power is intrusted to the hands of the people, who govern for the people; that is, for themselves. They may not always govern wisely, for the wisdom of man is limited; but their endeavor is, in this advanced age, to legislate for the happiness and well-being of the many rather than for the few.

The British Workmen's Compensation Act, which came into operation on July 1, 1898, is indicative of the trend of modern thought. It is noteworthy as an advanced step in social legislation. It is noteworthy considered from three aspects. It is somewhat remarkable that in a country that has been generally associated with extreme conservatism, and in which the classes, and not the masses, exercise the controlling voice in legislation, its legislators should pioneer in what in this country perhaps would be regarded as almost radical legislation. It is noteworthy because of the recognition that in modern society the relations existing between capital and labor are not merely measured by a certain stint to be performed by the laborer in return for a certain fixed price to be paid by the employer, but that capital, whenever it becomes the employer of labor, becomes invested with certain moral obligations from which it cannot escape; that the rights of capital are also its duties; that labor is something more than a commodity to be bought and sold in the open market, like the commodities with which it is too often measured. And, again, the law is noteworthy because the opposition that every progressive step arouses was not wanting. The prophecies of ruin that are so freely voiced whenever any attempt is made to better existing conditions were heard in all their vigor; and the old cry that humanity and a satisfactory balance sheet were incompatible struck terror to the hearts and pockets of the selfish, the timid, and the short-sighted. But the prophets of evil have been routed. The law is in successful operation, and the manufacturers of Great Britain are still doing business at a profit.

Broadly speaking, the law has aimed to accomplish three things: —

(1) To provide a method of compensation for accidents not due

to the employee's negligence, unlike the attempts heretofore made to enforce the employer's liability, and at the same time differing from the German scheme of compulsory insurance.

(2) To make the original "undertaker" liable for the acts of a subcontractor.

(3) To abolish — by inference only, but with all the practical result of direct enactment — the doctrine of "common employment." While conferring these benefits, the law restricts the employee from recovering compensation, if the injury was due to his serious and wilful misconduct; and, where he was entitled to compensation under the act, it does not prohibit him from seeking his remedy under existing law, if he so elects.

If an injury is caused to a workman by an accident arising out of the course of his employment, but which is not due to the negligence of the employee or the violation of the rules and regulations governing the employment, the employer is bound to compensate him in the following sums: —

In case of death, if the workman leaves dependants wholly dependent upon him, his compensation shall equal his earnings in the employment of the same employer during the three years preceding the injury, or the sum of £150, whichever is the larger, but must not exceed £300. If the workman leaves dependants only in part dependent upon him, the compensation may be determined by arbitration, but must not exceed the maximum already stated.. If no dependants are left, the deceased's funeral expenses are paid, not to exceed £10. In case of total or partial incapacity as the result of injury, after the second week the workman is entitled to a compensation equal to one-half of his average weekly earnings during the previous twelve months; but the payment may not exceed £1. No employer is liable for an injury that does not disable the workman for a period of at least two weeks from earning full wages. The law makes stringent provisions to prevent fraud on employers and to safeguard the rights of workmen. To avoid litigation as much as possible, provision is made for arbitrating differences and for certain simple court proceedings when arbitration is declined by either party,

Before the passage of the law, the manufacturers opposed it because they feared the obligations it imposed would be such an intolerable burden that the competition of trade, becoming more fierce every year, would be unable to stand the strain and would

break under the weight. But labor was not unanimous in supporting a measure designed for its benefit. The colliery owners fought the bill, because they believed a liability might be created that would be ruinous; while for the same reason the colliery operatives antagonized the measure, because they believed the compensation would come out of their own pockets, and that in the last analysis they would be worse off after the passage of the law than they were with no such law in existence. While the bill was pending, Mr. John Wilson, a member of Parliament and the secretary of the Durham Coal Miners' Association, opposed the bill in the following words: —

> Whence comes the money? The ready but incorrect answer will be, no doubt, from the employer. It will come no more from him than the water we drink comes from the tap or pipe it runs out of. It may run out of the tap, but it must first come from the spring or other source. So the money paid will come from the spring of the employer's wealth,— the labor of the workman. The employers are alive to the simple truth of political economy. In conversation with one large employer he admitted that, and it cannot be successfully controverted. It may be denied, but not refuted.

Mr. Joseph Chamberlain, the secretary of state for the colonies, a manufacturer and a large employer of labor, who is more noted for his hard-headed practicality than for the entertaining but unprofitable occupation of delusion-chasing, replied, admitting the correctness of the argument, "that every addition to the cost of manufacture must come out of wages, which, I think, will reduce the argument to an absurdity," showed that legislation on the line suggested did not tend to reduce wages, that, on the contrary, in all countries where similar legislation had been adopted wages had advanced. Whether the effect of legislation of the character under consideration has any effect upon wages, or whether in those countries where such legislation has been adopted the wage scale automatically rises, is a speculative inquiry foreign to the present discussion. The fact, however, remains that the tendency, during the last quarter of a century at least, is for the condition of the workingman constantly to improve; and that coincident with the improvement of his material condition — the decrease of his hours of labor and his more humane treatment — has been a substantial increase in his wages.

Any change in the relations existing between employer and employee is important in the bearing it has

(1) Upon production and profits.

(2) Whether labor gains by the change.

(3) Whether it has any effect in improving the relations between capital and labor.

What effect the law has had upon production and profits can be answered only in a very general way, and not with that exactness that can be regarded as conclusive. The law has not been subjected to the great test that is the touchstone of all economic laws,— *i.e.*, a falling market; and, until it has been submitted to that test, the cautious investigator will hold his judgment in suspense. One may, however, affirmatively assert that the effect of the law since its operation has not curtailed production; nor has it, so far as any one has been able to discover, had any effect upon profits. Whatever the cost of compensation to the employer, it has been regarded like any other charge incident to the carrying on of business, and not separated from it. It is reasonable to suppose that the death benefits and pensions must increase the cost of manufacture, and, therefore, increase the cost to the consumer, or, if the price is held stable, it is at the expense of the profits of the manufacturer; but so do insurance, office expenses, and other fixed charges that are recognized as inseparable from all commercial undertakings, but which are small as compared with the general turn-over, and, being a charge on all classes of business, the burden is equally distributed. Many employers regard the cost of the operations of the Compensation Act precisely as they do insurance or any other fixed charge that has to be taken into account whenever an estimate of cost is made. At the present time this cost is not appreciably felt. Whether this cost will be felt when production exceeds consumption will be quickly demonstrated. If I may venture to express an opinion on the subject, it is that, in the general readjustment that will follow, this item will be merged in that of all the others; and we shall no more see the law repealed because the profits are reduced than we shall see a return to that hideous order of things in England before the passage of the factory laws, when children of tender years were worked twelve hours at a stretch, under conditions that destroyed them, both body and soul. The world occasionally stands still, but it never goes backward.

It is very much easier to answer the second question, what labor has gained by the new law. Unhesitatingly, it can be said that labor has gained much, very much. It has profited not only materially, but morally; and the moral gain has been as important as the material. The employee has been made to feel that, when ill luck befalls him, when through no fault of his own, but simply due to the fact that he is an enlisted man in the great army of labor and meets with the fate that every man in the ranks may have to meet at some time, he is not forced to lose his self-respect by appealing to charity or becoming a charge upon the community. Death is robbed of at least some of its terrors. It is rare to find an English workingman who has been able to accumulate a savings fund out of his small earnings. Following his death, especially if he is cut off in his prime by an accident, his wife and children are reduced to the direst penury. The amount of compensation is not large; but it may save a woman from the streets and children from jail, it may enable a widow to set up a small shop and be self-sustaining instead of a charge upon the community. The law guards very jealously any money paid in the way of compensation. It may be invested for the beneficiary under the direction of the court, and is then virtually controlled by the court. No weekly payment can be assigned or attached or pass by operation of law to any other person, nor may any claim be set off against it.

When we come to consider the effect of the law on the relations existing between capital and labor, we see that it has undoubtedly improved those relations, although that improvement is merely incidental to the operations of the law, and was not contemplated by its supporters at the time of its enactment. Parenthetically, it may be added that this result would seem to justify the theory entertained by many sincere and earnest men, both among capitalists and laborers, who are constantly striving to break down the barrier and temper sordid commercialism by a spirit of friendship and mutual advantage, that, whenever employer and employee meet on common ground, and become jointly interested in any plan that is for the advantage of both, the result is seen in the increased benefit to capital and the added contentment to labor.

The law provides that an employer and his workmen, in lieu of the schedule of compensation under the act, may agree upon any scheme of compensation, benefit, or insurance, which in no case may be less favorable than the provisions of the act, and which

scheme is a substitute therefor. Before such a scheme becomes operative, it must be certified to by the registrar of friendly societies, a permanent government officer, who is charged with the duty of fully investigating it, and convincing himself that it is for the advantage of the workmen, and who then issues his certificate for a term not to exceed five years. If at any time during that period complaint is made to the registrar that the provisions of the scheme are no longer, on the whole, so favorable to the general body of workmen as the provisions of the act, or that the scheme is being violated or not being properly administered, the registrar must revoke the certificate unless the cause of complaint is removed. The law prohibits any scheme containing an obligation upon the workman to join the scheme as a condition of employment.

This provision of the law is worthy of the careful consideration of students of economic legislation, because both sides to the agreements regard them as a decided step in harmonizing the relations between capital and labor, and also because they have been found to give general satisfaction and to minimize litigation.

These schemes are jointly contributed to by employers and employees, a small payment on the part of the workmen increasing the amount paid as pension or benefits, and forming in effect a fund in which every employee has a contingent interest, which must be a direct incentive to him to protect the fund from fraud or demands upon it that might be unnecessary if the men exercised more care. Furthermore, it virtually constitutes a premium for men to remain in the continuous employment of the same employer, so as to share in the investment of their own savings, if misfortune overtakes them. Discussing the working of these schemes after the law had been in operation eighteen months, the chief registrar said: "Taking into account the other benefits, the payments during the first two weeks of incapacity, the subsequent payments in excess of those provided by the act, and the increase of funds, it would appear that, in the aggregate, the workmen derive from these schemes benefits considerably exceeding the amount of their contributions. The circumstances that the common interest of the employer and the workmen in the success of a scheme is in favor of that vigilance which would tend to diminish the number and severity of accidents, and the fact that there has been an absence of litigation in the settlement of claims, are also justly to be considered as advantages offered by the schemes."

The law has not given complete satisfaction,— what law ever does? — and, like all statute law, it stands as a monument to the ingenuity of men of flexible minds in perverting it to suit their own ends, and typifies the modern tendency of judicial construction to restrict, if not actually to nullify, the intent of parliaments. Legislative assemblies may know what they aim to accomplish, and they may attempt to convey certain rights or impose certain limitations; but, unless courts of last resort have passed upon every line of an act, and construed its every clause, and weighed it in its relation to the great body of statute and common law, no one may say whether the purpose of the legislature is to be accomplished.

The promoters of the law gave as one reason for its passage the fact that it would decrease litigation between employee and employer. That happy result has not been realized, but that failure must not be regarded as indicating the unsoundness of the theory on which the law is based. Most of the dissatisfaction with the act comes from the workingmen. While the masters may not be entirely convinced that they gain anything by the law, they have accepted it, and have not manifested any intention to evade its obligations. The workingmen, on the other hand, regard the act not only as crude, but as defeating, by the interpretations of the court, its purpose.

When the law was enacted, agricultural laborers were excluded from its benefits, partly on the ground that the nature of their occupation was not hazardous, and partly because it was feared that British agriculture, suffering from severe competition, could not bear the added burden. A year ago the act was amended; and agricultural laborers shared equally its benefits with all other classes of labor, except sailors, who are provided for by their own special code, and some other classes of workmen specifically excepted. At the present time a majority of all British workmen are protected by the provisions of this act; and the fact that its scope has been extended rather than restricted must give satisfaction to those of us who believe that the state is something more than "a mere night watchman," and that "its whole duty is exhausted when it guarantees to every individual the unimpeded exercise of his activity as far as consistent with the like right of his neighbors," and it will arouse the fierce scorn of those to whom the word "socialism" is only one degree removed from

that social and industrial Armageddon the result of which shall be chaos and everlasting destruction. "Few words," a recent writer remarks, "are at present more wantonly abused than the words socialism and state socialism. They are tossed about at random, as if their meaning, as was said of the spelling of former generations, was a mere matter of private judgment." In spelling private judgment has yielded to the exact science of philologists and lexicographers; and possibly in the years to come a more exact definition of socialism will rob the word of some of its terrors, and make for what it stands be viewed with more favor.

I think it will not be denied that every economic law has resultant sociological effects. The law-makers may have no intention to deal with any other phase than the economic; but a power greater than that artificially created by Parliament or Congress — the great law of nature — produces certain results that are as immutable as the movements of the planets or the actions of the tides. A law is passed to raise revenue. To put money into the treasury is the only purpose of the law-maker, whose vision or whose imagination is too limited to enable him to see any farther than the operation of the tax-gatherer. But the law, simple as it is, matter-of-fact and commonplace as it is, has deeper and wider significance. It was a law to collect ship-money that brought a king to the block.

The law that we are now considering has some curious sociological results that certainly were not anticipated at the time of its passage. It has been claimed by some employers that one of the effects of the law has been to make men careless and to encourage malingering; that the workman, appreciating that he would be compensated for injury and loss of time, has become indifferent to his personal safety; and that there is a certain temptation among a certain class of men to do themselves bodily injury and exaggerate its importance, which enables them to live in idleness at the expense of their employers. This suggestion, it is proper to say, is not general, and has been advanced by some employers as a suspicion rather than a definite assertion. How true the charge is, it is of course impossible to tell; but the representatives of labor have pointed out that no man willingly suffers pain, or takes the risk of death for the sake of small gain, especially when that gain is not certain. It is an interesting speculation whether laws of this character have any injurious re-

sults. I think, however, that we may dismiss the suggestion as not entitled to much weight. But, unquestionably, two consequences have followed from the passage of the act that are of the highest importance as affecting labor; and everything that affects labor affects the entire social system. One is that the employee has become more careful and more vigilant and more willing to conform to discipline. The law will only compensate those men whose injuries or deaths are caused through no fault of their own. Whenever they are the contributory cause, either by acts of commission or omission, they do not share in its benefits. The courts have repeatedly refused to award damages because the accident was caused by the plaintiff's misconduct. The misconduct or negligence of one man may not only cause the offender irreparable injury, but may cause equal injury to scores of others. The result is greater caution and greater regard for the rights of others.

But still more far-reaching is the more careful selection exercised by employers, and their disinclination to employ men who have passed their prime or whose mental or bodily faculties are in the least impaired or dulled. The reason of course is obvious. A workman past his prime is more likely to become injured than one younger and more alert; and, as the law imposes severe penalties on the employer, he will naturally take every precaution to minimize his risk. In time of stress, on a falling market, when production must be curtailed and the number of employees reduced, it is feared by the laboring men that those of them above a certain age would be the first marked for dismissal, which would mean that elderly men, those least able to adjust themselves to other employment because they have lost their initiative and are too old to learn a new trade, would be dependent upon charity or "looking for work"; and that is precisely the class for whom it is the most difficult to find work. The young, active, vigorous man can manage at times to eke out a living by turning his hand to any odd job: a man who has spent his youth and his manhood at a loom or watching a piece of machinery, and when long past middle age suddenly finds himself cast adrift, is the most hopeless derelict on the great sea of humanity, the most pathetic object that society has to contemplate. How well grounded the fear is, the future will show. It is enough to say that now it is an ever-present fear.

And here perhaps one should leave the question; but one is reluctant to dismiss it without saying at least a word about one of the most important and perplexing problems of the day,— the future of the man who falls behind in the fierce race of industrial competition because his springs are relaxed and his productive capacity is diminished, but who has still many years of life before him. The time at my disposal is too brief to permit me to do more than touch on the subject.

It is perfectly obvious that the tendency of all such laws as the British Workman's Compensation Act, and all other legislation that imposes responsibility upon employers because of an accident happening to their employees,— and more and more every year that is the trend of legislation all over the civilized world,— must inevitably result in making it more difficult for the middle-aged man to find employment whenever it becomes necessary to reduce the number of men employed. Another inevitable result of modern conditions is to increase the productive capacity of the unit; that is to say, that more bricks shall be laid within a given time, more bolts be driven as a day's labor, more yards of cloth be the product of a loom for a fixed price, all of which means that the bricklayer and the riveter and the weaver must work under greater pressure, which is a heavier tax upon their vigor and demands greater physical resistance. The higher the scale of civilization, the shorter the hours of labor and the higher the scale of wages. The workingman of to-day produces more, he accomplishes greater results, in his day's work of eight hours than did the workingman of a few years ago who worked two hours more a day for lower wages, and very much more than his predecessor who worked twelve hours a day for still smaller wages.

Competition and education have made the workingman, as they have made the manager and the professional man, more highly specialized, more skilful, and more intense. The faculties of men have become more concentrated. The result is that men can accomplish more in a given length of time than they were ever able to accomplish in the world's history; and, the more the power of concentration exists in men, the more successful they are. It is due to this faculty — more due to it than any other cause, I think — that America to-day stands in the van of industrial progress. The American mechanic while at work works harder than any other. He does not stop for his beer or 'baccy. He does not

potter. He does not make two strokes when one is sufficient. He works at high pressure, body and brain moving in unison, with a definite end always in view.

It has been well said that this is the age of the young man. It must be so. Only the young man of full bodily vigor and clear intelligence is able to stand the pace. Whether they work with their hands or with their brains, the drain on their physical strength is enormous. Only the physically strong can keep to the front.

But the old man is always with us; and the old man who has lived a life of usefulness, but whose circumstances have not enabled him to provide for the future, cannot be thrown on the charity of the world simply because he has reached the age limit. For him some provision must be made, or else the time will come when the thought of becoming old will be so terrible to contemplate that no man will dare think about that grim future.

It has always seemed to me that to state obvious facts without attempting to suggest a remedy for an admitted evil is a mere waste of time. If the proposed remedy is open to objection, it, at least, turns the current of thought in that direction, and acts as a basis from which the real solution may be evolved. In conclusion, I venture to suggest that the remedy to avert the menace that we must admit is real, and not fanciful, is to regard every worker as an enlisted man in the army of labor, and to provide for his day of retirement from active service by a fixed percentage of his earnings being retained and paid into a fund for his benefit, to which his employer contributes a certain amount proportional to the employee's share, and the state also contributes, not in the way of charity, but because capital has always an obligation to labor, and the state is always under an obligation to secure for its citizens the greatest happiness and the largest measure of prosperity. And with this thought, offered merely as a suggestion, because it seems peculiarly appropriate to advance it before this audience, I leave the subject for the present.

3. PUBLIC POLICY IN RELATION TO INDUSTRIAL ACCIDENTS.

BY ADNA F. WEBER, ESQ., OF ALBANY, N.Y.

[Read Tuesday morning, April 22.]

The social restlessness and discontent that have incited so much discussion in American politics in the past decade seemed for a time to be an agrarian movement, resulting from too eager investment in farm lands and a steady decline in prices. But underneath this agricultural discontent keen observers perceived symptoms of an industrial unrest, which became clearly manifest in the great strikes of 1892 and 1894, and at the present time overshadows all other internal problems. In many New England industrial towns the wage-earning classes have cut loose from both political parties, and united in an effort to put their own representatives — either socialists or union-labor men — in places of authority. They have succeeded in cities so considerable as Bridgeport and Hartford in Connecticut and San Francisco on the Pacific coast.

In the creation of this undercurrent of dissatisfaction with existing industrial relations a certain rôle must be assigned to judicial interpretation of the law. Ansonia, Conn., for example, elected as its mayor a member of the carpenters' union who had been made the victim of an extraordinary injunction against picketing, which even by the conservative press was characterized as an invasion of the right of free speech. But, while in public discussions the injunction has been the more conspicuous, it has not stirred up more bitter strife and criticism of judicial processes than has the interpretation of the law of negligence in actions for damages to indemnify physical injuries. On the one side, corporations despair of obtaining justice from unscrupulous negligence lawyers and hostile juries; on the other side, sufferers from accidents complain of unjustifiable tactics on the part of corporation attorneys and of a substantial denial of justice through the devotion of judges to narrow precedents and technicalities. Many

corporations, to be sure, do act in a spirit of liberality toward just claims for compensation of injuries; but many more betray so hard and grasping a purpose that jurymen would be less than human if they did not let their sympathies incline toward the plaintiffs. A recent instance of corporation hard-heartedness in New York State is by no means exceptional: By the decision of our highest court a widow has just recovered $8,000 with interest and costs, amounting to about $7,000 additional, as damages for the killing of her husband at a railroad crossing; this claim the company had sought to settle by offering to pay her $100. Again, a North Carolina corporation that was lately sued for the injury of a nine-year-old boy on a machine at which he worked in a cotton-mill, set up the ingenious defence that the boy was not injured while in the discharge of his duty, but through the exercise of the natural curiosity of a boy's mind to investigate the inner workings of the machine. It is no wonder that the jury found the corporation guilty of negligence for the mere employment of such a child on dangerous machinery.

Not only the inhuman selfishness of many corporation managers, but also the harshness of the law itself, incite the average juryman to give a verdict against the corporation at every opportunity. Take, for example, the doctrine of contributory negligence, which absolutely relieves the defendant of responsibility for accident, if he can show that the person injured contributed, by any degree of negligence himself, to bring about the accident. Nine-tenths of the negligence may be the corporation's and one-tenth that of the sufferer; but the corporation can, under the law, make the sufferer assume ten-tenths of the damages. This doctrine is peculiar to the common law of England and America, and does not find place in the law of Continental Europe; and, because it is so obviously unfair, juries frequently ignore it by exonerating the injured person from negligence of any degree. Probably many of you have heard the familiar story (recently printed in a *Forum* article) of a Western attorney and his friend, a judge, who came to a railroad crossing in the course of a drive together. The court in which the judge sat, it should be explained, had recently announced the rule of law known as "the duty to stop and look and listen." Unless this duty was performed, no man injured in crossing a railroad track could recover damages from the company, even though run over by the negligence of the company, because

he himself would be held guilty of contributory negligence. As the story goes, when the lawyer and the judge approached the crossing, the lawyer stopped the horse, leaped out of the carriage, went forward to the railroad tracks, shaded his eyes and looked long and intently in either direction, lay on the ground and put his ear to the track, listened for some seconds, finally arose and returned to the carriage, and without saying a word of explanation drove across the tracks. As the rails ran in a perfectly straight line for miles on each side of the crossing and no train was anywhere in sight, the judge betrayed astonishment at the lawyer's singular performance, and inquired its meaning. "Why," returned the lawyer, "just to show your Honor what a —— fool a man has to make of himself in order to conform with the decisions of your court."

This particular anecdote may contain much or little truth; but it fairly illustrates the prevailing belief as to the length which judges frequently go, in order to counterbalance what they look upon as the unreasoning hostility of juries to corporations. And it should be remarked that the doctrine of contributory negligence bears much harder upon employees than upon strangers. The most frequent of casualties is perhaps the wreck of a railway train; and in that event the corporation cannot possibly offer contributory negligence as a defence against claims for damages on the part of passengers, while it may very readily do so in the case of its employees injured at the same time. The passenger has had absolutely nothing to do with the wreck; but the conductor, or engineer, or trainman, may have left some minor thing undone or broken some rule of the company, and thereby be deemed to have contributed in some way to the accident, and hence have lost his rights to compensation for injuries.

But in such a case the more convenient way for the corporation to avoid paying damages to trainmen who may have been injured in precisely the same way as the passengers is to set up the defence of common employment. That is to say, if the accident was due to the negligence of a switchman, the trainmen injured have no valid claim upon the company, because the company is not legally responsible to one of its servants for the negligence of a co-employee. If a store clerk were run down on the street by a careless driver of a rival store's delivery wagon, the clerk could obtain damages from the driver's employer, by virtue of the legal

doctrine *respondeat superior*,— a principal is responsible for the acts of his agents. But, if the careless driver worked for the same employer as the clerk, the clerk would have no cause of action against the only person pecuniarily responsible,— that is, the common employer. The United States Supreme Court has decided, in substance, that in such cases the negligent employee and the injured employee are fellow-servants, even though employed in different departments of work.

This rule of common employment, or fellow-servant doctrine, is of comparatively recent origin, having been promulgated by the English courts in 1837 and by the American courts independently a little later. The English judge was led astray by the analogies of domestic service.* But the American judge, in establishing a similar exception to the universal rule of *respondeat superior*, was pronouncing upon the relations of employer and employee under the modern industrial régime (it was the injury of an engineer through a brakeman's negligence), and would naturally be supposed to have in mind the necessary consequences. It is evident, however, that Chief Justice Shaw of Massachusetts, in deciding the leading case of *Farwell* v. *Boston & Worcester Railroad Company* in 1842, could not have foreseen the results of his reasoning. He says: —

The implied contract of the master does not extend to indemnify the servant against the negligence of any one but himself: he is not liable in tort as for the negligence of his servant, because the person suffering does not stand toward him in the relation of a stranger, but of one whose rights are regulated by contract, expressed or implied. . . . Where several persons are employed in the conduct of one common enterprise or undertaking, and the safety of each depends much on the care and skill with which each other shall perform his appropriate duty, each is an observer of the conduct of the others, can give notice of any misconduct,

* "If the owner of a carriage is responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coach-maker, or his harness-maker, or his coachman. The footman, therefore, who rides behind the carriage, may have an action against his master for a defect in the carriage, owing to the negligence of the coach-maker, or for a defect in the harness; arising from negligence of the harness-maker, or for drunkenness, negligence, or want of skill in the coachman; nor is there any reason why the principle should not, if applicable in this class of cases, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid for putting him in a damp bed; for that of the upholsterer for sending in a crazy bedstead, whereby he was made to fall down while asleep and injure himself, for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen; of the butcher in supplying the family with meat of a quality injurious to the health; of a builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins."

incapacity, or neglect of duty, and leave the service, if the common employer will not take such precautions and employ such agents as the safety of the whole party may require. By these means the safety of each will be much more effectually secured than could be done by a resort to the common employer for indemnity in case of loss by the negligence of each other. Regarding it in this light, it is the ordinary case of one sustaining an injury in the course of his own employment, in which he must bear the loss himself, or seek his remedy, if he have any, against the actual wrong-doer.

The fruits of the fellow-servant doctrine, thus promulgated by the courts, appeared with startling distinctness in the Ashtabula train disaster, when it was learned that among the passengers injured in the wreck were employees of the railroad who were being carried to their work; and they alone had no legal claim upon the company for injuries sustained. Since then judicial interpretation has somewhat modified the law by holding that employees to whom the employer delegates authority are vice-principals, and not fellow-servants, of an employee injured through their negligence. But for this vice-principal rule, railroad corporations would not be legally responsible to employees for the negligence of their superintendents or even general managers.

Such statutes as have been enacted in this country on the subject of employers' liability have nearly all had for their purpose the abrogation or, at any rate, the modification of the rule of common employment, which so obviously discriminates against employees. It is significant, too, that two-thirds of the American statutes on this subject apply only to railways, which are naturally the first enterprises to demonstrate the economic fallacy of the fellow-servant doctrine.

A third defect of the common-law liability of employers remains to be mentioned; namely, the rule of acquiescence or consent (*volenti non fit injuria*). As we have just seen in Chief Justice Shaw's opinion, which is still accepted as perhaps the clearest statement that we have, the fundamental assumption of the law is an implied contract between employer and employee by the terms of which the employee accepts all the usual and obvious risks of his occupation. But, beyond this, the workman is required under the law to notify his employer of any defects in the work-place, tools, or machinery that he may observe. If he fails to give the employer such notice, and is subsequently injured on account of such defective work-place or machinery, the courts will hold that

simply by continuing at work he voluntarily accepted the additional risk himself, and hence cannot recover damages for the employer's negligence to furnish a safe place. This rule is not peculiar to the law of master and servant, and on the face of it has much sense. But the real question is, How does it work out in practice? Anybody familiar with every-day affairs knows that the average workman does not study the philosophy of the law, does not understand that it is a part of his duties to speak to his foreman or superintendent about defects which the latter sees every day, but does not repair. In fact, if you could find a workman well educated in the law, and having a clear comprehension of his duties in the premises, you could not induce him to perform those duties, because he well knows that such conduct would be regarded by the employer or superintendent as an impertinence, which, if persisted in, would insure his dismissal.

This ridiculous theory of acquiescence has been carried so far in some States as to nullify statutes requiring the fencing of machinery. Under the common law it is the employer's duty to furnish safe work-place, tools, machinery, etc.; but the judicial interpretation of the word "safe" has been so loose and unsatisfactory that many legislatures have found it necessary to define it by statute, and have therefore enacted laws requiring the guarding of elevator shafts, dangerous machinery, etc. When carefully enforced, by a large staff of factory inspectors, these statutes diminish the risks of injury; but, so far as employers' liability is concerned, they are set aside by the decision of the courts that the employee assumes the obvious risks of his occupation, and that work on unguarded machinery is one of the obvious risks. Hence no disobedience of these laws makes the employer liable for negligence. The leading New York case (*Knisly* v. *Pratt*, 148 N. Y. 372), decided in 1896, furnishes a concrete illustration. A young woman just of age, while employed in a factory, is ordered to clean a machine in motion. It is unguarded; and she gets caught between the cog wheels, and loses an arm. She brings action against the employer for negligence, and obtains damages by the jury's verdict. But on appeal the court holds that the employer's disobedience of the law was not negligence. The woman knew the dangers of the trade when she accepted employment. The risk of injury by the unguarded machine was perfectly obvious to her, and was accepted by her continuance at work.

To show how unsatisfactory is the judge-made law of employers' liability, not simply to the workingmen, but even to lawyers of high standing, I quote the following paragraph from the preface of a leading authority, Shearman and Redfield on the Law of Negligence (page vi. of latest edition, 1898): —

> The stubborn resistance of business corporations, common carriers, and mill owners to the enforcement of the most moderate laws for the protection of human beings from injury, and their utter failure to provide such protection of their own accord, ought to satisfy any impartial judge that true justice demands a constant expansion of the law in the direction of increased responsibility for negligence, instead of attempts, unfortunately too common, to restrict such responsibility by introducing new exceptions.
>
> The law of master and servant in its relation to the law of negligence affords perhaps the most striking example in the last half-century of gross injustice done by this disposition to restrict responsibility and suppress litigation.

Without going further in pointing out the defects of the common-law rules as to the liability of employers, I think that we can all understand why so much dissatisfaction with the law exists and why twenty-five of our States have by statute modified one or more of those rules. As I have already said, most of these statutes aim simply at the abrogation of the fellow-servant doctrine. But what does that remedy really amount to? Massachusetts has for years had an employers' liability law; but the liability insurance companies, which assume the liabilities of employers with respect to injured employees, charge precisely the same premium rates in Massachusetts that they do in the rest of New England. Even were the fellow-servant doctrine entirely discarded in this country, we should only have arrived at the point from which all of Europe (except Great Britain) started. As a matter of fact, we are twenty years behind England and seventy years behind Germany in dealing with the problem of industrial accidents. We are now striving for a law similar to the one enacted in England in 1880, and soon demonstrated to be virtually worthless. Our wage-earners have not ventured to aspire even to the principle in the Prussian law of 1838, which was only the first step in German legislation upon this subject.

In Prussia and other countries that have not been burdened with the doctrines of contributory negligence and acquiescence as developed in the realm of English law, the first efforts to reform

the law of liability have been directed toward the reversal of the burden of proof. Scarcely had the first railway been opened in Prussia before her statesmen realized the burdens that would fall upon public charities if all the cripples and the families of persons killed in railway accidents were obliged to furnish legal evidence of negligence on the part of the railway company. Hence as early as 1838 Prussia enacted that a railway company should be held liable for all injuries to employees or passengers *unless* it could produce legal proof that the injury resulted from the negligence of the victim or an act of God (*unabwendbaren äusseren Zufall;* i.e., *vis major*). This law was copied by several of the smaller German states, and upon the foundation of the German Empire in 1871 was adopted for all Germany.

For a long time the inversion of proof remained the goal and hope of public-spirited statesmen in Europe, who sought to extend its application from railways to other hazardous employments. In this effort, Switzerland has gone farthest, her laws of 1881 and 1887 having applied the principle to factories, building enterprises, construction work, transportation in all its forms, etc. But in Germany the leading economists were opposed to the extension of the railway liability law to manufacturing industries, not because it went too far, but because it afforded a remedy to so small a proportion of all the employees injured. The economists insisted that it was a waste of effort to attempt to place the responsibility in the majority of accidents, since comparatively few accidents in modern industry involve any real negligence at all. Most accidents are unavoidable, and should be compensated by the community; that is to say, the cost of indemnifying accidents should be included among the regular expenses of production, and paid for by the consumer. The economists made out so strong a case that Bismarck and the imperial legislature were convinced, and accordingly enacted the accident insurance law of 1884, which assures to every workingman disabled in the course of his employment a pension equal to two-thirds of his usual wages, and in case of fatal accidents a small funeral benefit and a pension to the family equivalent to 60 per cent. of the victim's wage. By this act Germany virtually abandoned the law of negligence as respects accidents to workmen * in favor of the compensation of all accidents, according to a prescribed scale. This principle was

* This is not to say that Germany repealed the employers' liability laws. A German proprietor may still be sued for criminal negligence if the injured workman so elects.

adopted by Austria in 1887, by Norway in 1894, by Finland and Roumania in 1895, by Great Britain in 1897, by Denmark, Italy, and France in 1898, by Spain, New Zealand, and South Australia in 1900, by Holland, Greece, and Sweden in 1901. It thus appears that, of the principal countries of the Western world, only the United States and Russia still adhere to negligence law as the sole remedy for the indemnification of accidents; and even in these two countries the light has begun to dawn, for Russia has applied the principle of compensation to the imperial mines, and in this country one State (Maryland) has within the present month accepted the same principle to a limited extent. What is the meaning of this revolution in legislative policy toward a great subject, like the problem of industrial accidents? A few words will, I trust, serve to explain it.

The fundamental bases of this legislation are: (1) the demonstrated fact that the causes of accidents to workmen are not personal, but industrial; and (2) the consequent belief that social justice is more nearly attained by distributing the financial burdens over the community than by leaving them upon the families and friends of the injured workmen. The law of negligence rests on the contrary assumptions that the causes of accidents are personal, can be readily ascertained, and can be prevented by making each person responsible for his own carelessness. This would be a beautiful theory if it could only be made to square with the facts. But no amount of care will make the work of a railroad trainman as free from accidents as that of a cigar-maker. We may go to the farthest possible length in requiring safeguards upon a metal stamping machine, and instruct the operator most explicitly as to the need of extreme care; but accidents are bound to happen so long as that machine is run at a pace of sixty motions a minute. The fact is that every trade has its own coefficient of risk, and that the personal equation is in comparison of small importance. Take the statistics of accidents in any country for a series of years, and you will find that year after year twenty workmen are killed or injured in mines to one killed or injured in a tobacco factory. No conceivable precautions or care will make the occupation of a miner as safe as the trade of a compositor.

But, answers the extreme individualist, the miner is paid a higher wage to compensate him for his larger risk. In making the implied contract of service, "the master says to the servant:

'You understand fully the nature of the employment and the danger attending it. Will you enter it?' The servant says, 'I accept it.' And the law implies that he accepts it with all the risk incident to it, without regard to the magnitude of the dangers."* This implied contract, with its implication that the servant gets a higher wage because of the risk, is, as Judge Earl of the New York Court of Appeals has declared, a pure fiction.† It is wholly contrary to facts. No occupation is more dangerous than that of the sailor; but what wages does he get? If compensated for the hazards of their trades, miners and trainmen ought to be the very aristocrats of the working classes. Are they? Truckmen and team drivers are injured more frequently than skilled mechanics of any trade, but they earn no more than common laborers. The idea of free agency cannot in truth be applied to the mass of men in their choice of occupation. For most workmen their employment is determined by chance and by circumstances,— their home and its surroundings, the standard of comfort enjoyed by their friends and neighbors. It seems to me a gross error to attribute to the great body of workers that power of weighing advantages and disadvantages and that calculation of risks which we look for in an educated engineer before he decides upon his future line of work.

The truth of the matter is that our policy in regard to industrial accidents has been determined by too unthinking a devotion to the eighteenth-century dogma of *laissez-faire*. The United States and England, and every other industrial community, had to throw overboard this so-called sacred right of free contract when they enacted the factory codes that are now recognized as indispensable safeguards of true economic freedom. For we have now reached the point where we realize that economic freedom is not to be attained by the removal of all restraints upon the freedom of contract: we have seen that such negative liberty means simply the economic tyranny of the strong,— the introduction in some cases of an actual state of serfdom under the forms of freedom. Under absolute freedom of contract, men have been compelled by economic pressure to sign away their actual freedom for a term of

* *Foley* v. *Jersey City Electric Light Company*, 54 N.J. Law, 414.

† "To enforce the supposed public policy, a fiction has been invented by which the servant is said to assume all the risks of the service in which he engages, which includes the risk of injuries caused by the negligence of co-servants engaged in the same employment.— *Crispin* v. *Babbitt*, 81 N. Y. 520.

years, so that the courts have had to rule such contracts illegal. This logical result of the *laissez-faire* doctrine is too familiar a fact to require further attention. It is sufficient to refer to the admirable address on Industrial Liberty which Professor Ely, as president of the American Economic Association, delivered in this hall last December, and in which he developed the idea of *positive* liberty as opposed to the negative liberty of philosophical anarchism. It was a realization of this same concept of positive liberty that impelled the United States Supreme Court to uphold the Utah statute depriving workmen of their right to contract to labor in mines and smelters more than eight hours a day.* That decision explicitly recognizes the fact that employers and employees do not stand upon a footing of equality. "The proprietors lay down the rules, and the laborers are practically constrained to obey them." The authority of this ruling of our highest tribunal will, it may be hoped, put a quietus to the reasoning which estops legislation for the protection of the life and limbs of the wage-earners, on the ground that such matters can be constitutionally regulated only by contract between master and servant.

But persons who concede the competency of the legislature to prescribe certain conditions of the labor contract may question the expediency of making the employer the insurer of his operatives against accident: they believe that every person should be responsible only for his own misconduct or remissness, and that the law of negligence should be so amended as to enforce that responsibility. The two fatal objections to such a policy are: (1) that in our modern industry, built up through the use of complicated machinery under the care of salaried managers, superintendents and foremen, who are neither masters nor servants in the economic sense, it is impossible to locate the legal responsibility for a majority of industrial accidents; and (2), even if a law could be framed which would secure to every workman compensation for injuries sustained through another's negligence, thousands of cripples would still be thrown upon the charity of friends or the public through accidents that are unforeseen and unavoidable. Abundant proof of these assertions is at hand.

First. The German imperial insurance office investigated the causes of 16,000 indemnified accidents in the mechanical indus-

* *Holden* v. *Hardy*, 18 Sup. Ct. Rep., 390.

tries in 1887 and of 20,000 in agriculture in 1891, and found that less than one-fifth of all these injuries could be charged to the employers' negligence; and in a court of law the proportion would of course be still smaller. On the other hand, nearly one-half the accidents were due to unforeseen contingencies or to the encounter of such hazards as could only be classed as unavoidable.*

Second. The Austrian imperial insurance office, which, like the German office, determines for sociological purposes the responsibility for accidents that it indemnifies, found that, of the 50,000 injuries indemnified in the five years 1890–94, 26 per cent. might be attributed to the imprudence or carelessness of the victim, 2 per cent. to the negligence of the employer, and 70 per cent. to unforeseen contingencies. It might be thought that increased experience in investigating the causes of accidents would result in a diminished number of the inevitable casualties; but, on the contrary, this class of accidents steadily increased from 52 per cent. of all accidents in 1890 to 78 per cent. in 1894.

Third. To come nearer home, we have some significant testimony handed in to the British Royal Commission on Labor in 1893 by a London liability and accident insurance company. The figures showed that, out of 10,217 accidents to employees reported by its clients, claims for damages were made by only 2,467 injured workers. The company admitted 1,188 claims, and paid 139 more after litigation, so that 1,327, or 13 per cent., of the crippled workmen received some compensation. The same company testified that of 26,087 injuries which it compensated under the ordinary workmen's collective accident policy, entitling an injured employee to a stipulated amount irrespective of the question of negligence, probably 12 per cent. would have been entitled to compensation under the law of liability; that is, under the Employers' Liability Act of 1880, which has heretofore served as the model of American reformers.

* See Report of New York State Bureau of Labor Statistics for 1899, p. 787. The percentages are as follows: —

	Per cent. of total.	
	Industry.	*Agriculture.*
Fault of employer	19.76	18.20
Fault of injured employee	25.64	24.43
Fault of both	4.45	20.11
Fault of third person (co-employee)	3.28	2.75
Indeterminable	3.47	2.24
Unavoidable	43.40	32.27
	100.00	100.00
Total number	15,970	19,918

The operations of the European compensation acts and of American insurance companies have completely demonstrated the superiority of compulsory insurance over negligence law to every candid mind that has given the subject serious consideration. Negligence law will always be necessary to punish gross carelessness and wilful misconduct, but it cannot provide a remedy for the numerous victims of modern industrialism. No negligence law, for instance, can be framed that will determine the question of negligence when a colliery explosion kills all the miners and destroys the evidence, nor one that will relieve the injured employee of the apprehension of losing his job in case he should sue his employer for damages. The report of the British Commission on Labor puts the working man's case in a nutshell, thus: —

> The truth is that to the workman litigation under the act [of 1880] has more than its usual terrors. It is not merely that litigation is expensive, and that he is a poor man and his employer comparatively a rich one: it is that, when a workman goes to law with his employer, he, as it were, declares war against the person on whom his future probably depends; he seeks to compel him by legal force to pay money, and his only mode of doing so is the odious one of proving that his employer or his agents — his own fellow-workmen — have been guilty of negligence. Add to this that the legal proof of such negligence is often extremely difficult. The broad result is that a legal claim for damages only answers where the injury is very great, and the workman is prepared to leave his master's service.

And, on the employers' side, equal dissatisfaction with liability law is manifested. Liability to pay damages for negligence does not lead to any correspondence between the penalty and the degree of culpability. The most criminal negligence might result in a trifling injury, compensated at the expense of a week's wages, while some trifling oversight in the selection of materials might lead to loss of life and heavy damage suits. On the other hand, many a fairly disposed employer has found himself prosecuted by professional "damage" lawyers or "shysters," who stepped in to prevent any peaceable arrangement between him and an injured workman.* The expenses of litigation under negligence law have become so enormous that some employers have found it

*"One honorable friend, in giving me his experience, has told me that in two cases, which he was absolutely bound to fight, and both of which he won, the costs amounted to more than compensation ever given under the Employers' Liability Act." Speech of Mr. Chamberlain, Hansard's Debates, 1897, vol. xlviii. p. 1465.

cheaper to pay compensation to all injured employees in entire disregard of the possible negligence of the victims themselves. Some large concerns maintain a free hospital service, and allow injured employees part of their wages during their disability. Others maintain an insurance department or fund, to which employees are also permitted or required to contribute. The most noteworthy instances are the relief departments of some of the leading railway companies. Not all of these can be approved, however, as their real effect is simply to compel employees to insure themselves against accident and release the company from its liabilities under the law of negligence. The company defrays, indeed, the expenses of management, and thus secures to the men very cheap insurance; but this benefit is an entirely inadequate return for the deprivation of employees of their common-law rights to hold the company and its agents responsible for negligence resulting in injury or death. These compulsory agreements — for such is usually their character, even when the insurance funds are called "voluntary" relief departments — are wholly contrary to public policy, and should be prohibited by law in every State wherein the courts recognize their validity. Whether participation in the insurance fund be voluntary or compulsory, the employee, when injured, should be allowed a choice of remedy,— indemnification from the insurance fund to which the company has partially contributed *or* an action for damages under the law of negligence. It is always desirable that the employers be made to pay heavily for gross negligence. Hence in England and other European countries the employee, though sure of compensation in any event, may always elect to sue his employer for damages if he believes the employer's negligence to be culpable.

Aside from these private insurance institutions, which are developing rapidly in this country, we may also observe a notable development in the business of the regular accident insurance companies, which issue what is known as the workmen's collective policy. The standard form of this policy secures to the workman injured while at work in the establishment that takes it out these benefits: —

(*a*) In the event of death, a sum equal to one year's wages, limited to $1,500.

(*b*) For the loss of two eyes or two limbs, the same amount.

(*c*) For the loss of one limb, one-third of a year's wage.

(*d*) For the loss of one eye, one eighth of a year's wage.

(*e*) In the event of temporary but total disability, one-half the regular weekly wage for a period not to exceed six months. (Such sum not to exceed $500 in respect of any one employee injured within the policy year.)

To secure such insurance, the employer pays to the company a prescribed percentage of his annual pay-roll, varying according to the industrial risk. As a general rule, the lowest rate is $1 for each $100 of the total pay-roll. The highest rate paid by any large industry is $3.50 for mines (lead and zinc miners, $6). Most of this business is in the hands of the liability insurance companies that have grown up within the last decade. As the name suggests, these companies insure business men against various legal liabilities, more particularly their liability to injured employees. The liability rates are somewhat lower than rates for collective policies. Thus in the textile schedule the liability rates are 30 and 37½ cents as compared with $1 for the collective policy. In the stone schedule the respective rates are 60 cents and $1.50 (except quarries, for which both rates are $2.50), and in coal mining 80 cents and $1 as compared with $3.50. But, while the collective policy secures a substantial benefit to every crippled employee without any legal quibbles at all, the liability policy means to the workman simply a harder fight to secure damages. In fact, unless the workman has a perfectly clear case of negligence on the part of the employer, he might as well make no contest at all.*

Since, then, money spent by employers for workmen's collective

* The manner in which the liability companies prepare to contest a claim has been thus described: —

When an accident happens, there are always two sides to the case. The great corporations and casualty companies find it absolutely necessary, in order to protect their own interests and defeat any possible claim for damages, to have the accident immediately investigated. This work is done with a thoroughness to which even the average lawyer is an utter stranger. Generally, within a few hours after an accident, the witnesses to it are tied up and committed by written statements or affidavits drawn up with consummate skill by the agents of the corporation or casualty company, and many matters are incorporated in these statements which to the unskilled mind of the witness do not seem at all important or are entirely meaningless, and the witness signs such statements without appreciating the law points which the skilled adjuster is endeavoring to cover and protect; and, as a result, he is frequently astonished at the trial to find that he has made a statement which does not conform to the facts.

Immediate investigation of an accident is so important that the casualty companies will not protect their insured unless they receive immediate notice of the accident. The reason for this is that an accident can only be properly investigated by doing the work *immediately*, as a day or two later the scene of the accident is cleaned up, broken parts of machinery, etc., are gotten out of sight and locked up, and everything possible is done to prevent an investigation of the accident and the discovery of the true facts by the representatives of the persons injured.

Although this statement is derived from a workman's legal security company, which makes a business of gathering evidence for injured workmen, it may be accepted as fairly accurate.

policies secures substantial benefits to the injured, and that expended for liability policies does not, all considerations of expediency as well as justice require the enactment of laws favoring the regular insurance. In so doing, we shall simply be following the example of all our commercial rivals, and shall not, therefore, be handicapping our industries. We do not need to make such insurance compulsory, but simply to replace our liability laws, based on negligence, with compensation acts like the English and French, fixing the amount of indemnity for every injury sustained by an employee from any cause whatsoever, except wilful misconduct. By removing uncertainty, it will make accident insurance easy, and thus do away with the frequent scandals arising out of liability insurance.*

Our most sagacious public men are already realizing the situation; and the Republican party, in its latest national declaration of principles, declared in favor of "an effective system of labor insurance."

In the framing of such a law, the question would doubtless arise, Should employers be permitted to deduct part of the insurance premiums from the wages of employees? In Europe this question has almost universally been answered in the negative, in accordance with sound economic principles, which require that the wear and tear of the human agents of production no less than the wear and tear of the inanimate machinery should form part of the expenses of production, and be ultimately borne by the consumer. The employer is the only person who can shift those expenses. He treats the breakage and wear of his machinery as a regular item of expense, calculates the annual depreciation, includes it in his estimates of cost of production, and passes it on to the buyer as a part of the price. It is the same with losses by fire. The cost of fire insurance is paid, in the first instance, by the mill-owner, but ultimately by the consuming public. Because a powder-mill is more exposed to destruction by fire than a printing-office does not signify that the profits of powder manufacturers are smaller than those of printers. It only increases the price of powder. Similarly, under a law requiring a powder manufacturer to compensate every employee injured in his mill, his profits

* Last month an Illinois court awarded a Chicago workman $800 damages against a London insurance company for securing his dismissal from employment because he had sought to recover damages for injuries. This is probably an extreme instance of the tactics pursued by liability companies to escape the payment of just claims.

would not be diminished, because he could include such necessary expenses in the selling price of powder, *provided that his competitors were subject to the same outlay or tax.* For this reason a really scientific and just compensation act should be of national scope. Congress has the power to enact a law embodying the principle of industrial risk for all corporations engaged in interstate commerce. It would protect the million or more of workingmen employed in the exceedingly hazardous business of transportation and many more in other industries. It would also serve as the model for State legislation, which would necessarily vary from it only in allowing competitive enterprises to deduct part of the expenses from wages. Such deductions would be relatively unimportant, since our largest and most hazardous industries are now more or less monopolized, and should be made to bear the cost of indemnifying accidents out of monopoly profits. This is particularly true of corporations holding special franchises, like railway, gas, telegraph, and telephone companies.

These principles are not fully carried out in the statute recently enacted by the State of Maryland, and constituting in many respects the most advanced legislation on this subject that we have in this country. With reference to a few of the most hazardous employments, like mining, quarrying, and railroading, the Maryland act wipes out the common-law rules of common employment and contributory negligence. A more novel feature, however, is embodied in the subsequent sections of the bill for the encouragement of accident insurance. They permit an employer to relieve himself of the additional liability imposed by the first section of the act by paying over to the State Insurance Commissioner certain monthly sums of money,* calculated according to the number of his employees. From the fund thus created the Insurance Commissioner is to pay the sum of $1,000 to the family of each employee killed in the course of his employment. This act is certainly a great improvement upon all existing liability laws in the United States, and will undoubtedly lead to better things in the near future; but it is to be regretted that the legislature felt compelled to assess part of the expenses upon the employees by allowing employers to deduct one-half of the premiums from wages. Such deductions may be justified in the case of competi-

* The annual per capita amounts are as follows: —

Mining and quarrying, $1.80; steam railroads, $3; street railroads, $0.60; public construction work to be determined by the Insurance Commissioner.

tive industries like mining and quarrying, but no sound economic reason exists for permitting it in the case of railways and street railroads.

In conclusion, I desire to point out one very conservative method that ought to be adopted without hesitation in every State in this country; namely, the insertion in every contract for public works of an accident insurance requirement. Every artisan and laborer employed on public work should be assured not only of medical care in the case of injury, but also a weekly benefit during the period of disablement, and in the event of death from such injuries an indemnity to his family equivalent to at least five years' wages. Very frequently the families of such workmen have to be supported by public charity. It is much better to give them a fair amount as a matter of right. In Chicago the employees of the public works department now receive hospital care free and also part of their usual wages. In the European cities such treatment is not exceptional. It should no longer be exceptional in this country.

NOTES OF DISCUSSION.

A GENTLEMAN.— I would like to inquire whether in the suggestions submitted there ought not to be indicated some provision for keeping the injured in occupation and not permit them to go into actual idleness,— whether they should not be provided with a mild form of employment.

Mr. MAURICE LOW.— Mr. Chairman, that naturally is a part of the whole scheme. Where you have a comprehensive scheme for providing for the employment of men who have passed a certain age, it would follow that those men would be given such work as is suitable for their capacity. The trouble now is that a bricklayer, who is expected to lay a certain number of bricks a day, and who reaches an age where he cannot come up to that stint, is declared to be useless.

Mr. CHARLES H. LITCHMAN.— There is one point I did not catch. I followed very closely the able presentation of the subject, but I did not catch whether or not Mr. Low touched upon the question of what would become of the contribution of the workingman toward this fund in case of his discharge from employment; and I shall be obliged if he will elucidate that point somewhat.

Mr. LOW.— In case of his discharge, of course, he loses his contribution. It goes into the common fund. It is very similar to a Tontine: the survivor profits. It is the general form of all Tontine insurance. The man who does not stay in loses his contribution; but, if he does stay in, he gets it.

Mr. LITCHMAN.— That leads up to another important question; that is, whether it may be for the interest of the employer, or any one else, to produce

circumstances under which that discharge may be involuntary on the part of the workman. A voluntary severing of employment carries its own punishment; but, when the discharge is involuntary or brought about by anything over which the workman has no control —

Mr. Low.— It may be due to a falling market.

Mr. Litchman.— But on a rising market there have been discharges. It has been to the interest of employers to discharge the workman under such conditions, and I desired to know whether that was provided for.

Mr. Low.— The registrar of the friendly societies is regarded as the guardian angel of the workmen who contribute to these schemes, and he watches these things very closely. Should he discover that a workman is purposely discharged, so that the employer may profit by his contributions to the scheme, he would immediately take action against the employer to cause a distribution of the money paid in by the workman or adopt some other remedy that would be equitable and just. He can step in at any time and revoke a certificate, or he can cause it to be amended after it has been issued; and it has frequently happened. The registrar goes into that with much detail in his report. Schemes were submitted to him, and for one reason or another he declared that they were not as favorable to workmen as would be the operations of the law. He would then make certain suggestions to both employers and employees, and the suggestions were always adopted. So I think that the registrar would protect the rights of the workmen under any such cases.

Mr. Samuel Gompers.— It was only late yesterday afternoon when it was suggested to me that I might come here and take part in this discussion. Ever since then I have been busy, and have been unable to give the subject further attention than to listen attentively to the able paper presented by Mr. Low and the remarks of Mr. Brooks.

I do not know that I am at this time prepared to criticise the scheme or even to give it my approval. The scheme I have in mind is that presented in the paper by Mr. Low on the workingman's compensation act. The question that Mr. Litchman asked Mr. Low is a matter upon which I jotted a note,— that there is no security to the wage-earner in the payment he makes toward the fund. I assume that under the British compensation act the scheme is more comprehensive and works to a very much greater degree for the attainment of justice and equity than do the agreements reached by employers with employees inaugurating private schemes of insurance in a particular establishment; but the experience has been very general that the employers have always, or almost invariably, invented or resorted to schemes that nullified the financial interests of the employees in those schemes. There is, apart from that, another result; that is, where workmen are tied up in the financial interests of the concern, they lose something financially by leaving the employment of a particular employer or company, and usually worse conditions in the form of wages, hours of labor, and other conditions under which labor is performed, obtain than relatively in other establishments where no such scheme is in operation. The fact that men cannot freely move from one place to another, from one establishment to another, so entwines their interests with the particular employer that they frequently submit to a low-wage scale, work a longer number of hours per day, or submit to other condi-

tions of employment which, under other circumstances, they would resist and decline to accept.

Another remark that Mr. Low made — that is, if I caught it accurately — was that the scheme resulted in benefit to the employer and more contentment to the employee. If these are the two results, and if I correctly caught what was intended to be conveyed, I should say that I dissent from that proposition if it merely results in benefit to the employer and contentment to the employee. I think I should prefer to reverse the conditions, and allow a little benefit to come to the employee and perhaps a little contentment to the employer.

When, a short time ago, the management of one of the railroads of the country gave expression to the statement that men forty-five years of age were practically out of business,— out of the great rush, the great strain, the great activity of modern industry, that they were practically superfluous,— a friend of labor, prominent in the labor movement in Chicago, suggested that, if that were true, it might be well, after a man had reached the age of forty-five, to take him to some public pound and kill him. Some people, unappreciative of his irony and taking him seriously, charged him with wanting to kill all workmen over the age of forty-five, very much after the misunderstanding by some people of Dean Swift's irony and sarcasm, when, through the poverty of the people in Ireland in his day, he suggested that it might be well, perhaps, to satisfy the appetite of the British aristocracy, to allow them to take the young and tender babies of the Irish peasantry, because they made excellent food.

The fact of the matter is, however, that this is a very great problem and is becoming a greater problem day after day,— the question as to what is to be done with the man in modern industry who has reached that age, and is rendered superfluous. There is one thing to which I dissent; and that is that the workmen, either now or hereafter, may be regarded as enlisted men. I want the workmen to be freer in their movements and in their right to move than are enlisted men. In my judgment, it does not make for the general good. There is too much of that notion even now. I think there is more done and being done, and that more will be done, by workingmen, organizing in their trades-unions and by the establishment of funds in those unions, to protect them in case of non-employment, in case of illness, in case of accident,—yes, and even in the superannuation benefit, as is now provided in many of the trades-unions of Great Britain and in a few in the United States, than is suggested or accomplished by the proposition under consideration.

Another fear that I have in regard to the consequences of this workingmen's compensation act is that, when employers are subject alone to the penalty that may be imposed by this act, relative to the introduction of new and better devices for the protection of the life and limbs of their employees, that would not be a sufficient cause to provide themselves and their employees with the very best devices. I think that an employers' liability act, a comprehensive one, eliminating the particular hunt to which Professor Brooks refers, would have this effect: first, to make the employer secure the best devices possible for the safety of life and limb; second, to reduce accidents to the smallest possible number. The commonly accepted notion of con-

tributory cause, that the injury was due to the negligence or wilfulness of a co-employee, is that with which workmen have most to contend against in the courts and bars their suits for damages for injuries, and most of all makes employers indifferent or criminally negligent of the life, health or limb protecting devices.

4. CRITICAL OPINIONS UPON RECENT EMPLOYERS' LIABILITY LEGISLATION IN THE UNITED STATES.

BY JAMES R. BURNET, ESQ., OF THE NEW YORK BAR.

[Read Tuesday evening, April 22.]

The invitation of your distinguished chairman to present what may be termed the employers' view of the present tendency of employers' liability legislation in the United States imposes upon me peculiar difficulties in the present condition of legislation on this subject. Perhaps no field of legislation has increased so rapidly and with such complexity within the past fifteen years as that which seeks to adjust the legal liability of the employer for injuries sustained by his employees in the course of their employment, and to secure to such employees an adequate compensation for their injuries, without imposing an undue burden either upon the employer or upon the industry in which he is engaged. Over half of the States of the Union now have upon their statute books an attempt to define this liability, varying from the limited enactments of such States as California, Montana, Minnesota, North Dakota, and South Dakota, which have sought merely to codify the common law under the direction of that great code-maker, David Dudley Field, of New York, to those States which, like Massachusetts, Alabama, Colorado, and Indiana, have substantially reproduced the English Employers' Liability Act of 1880. Even the State of New York, which throughout all the legislation and litigation affecting employer and employee has stood conspicuously for the principle of the workman's own responsibility for his conduct, imposing always the burden of proof upon the injured employee and denying him a recovery for any injury contributed to in the slightest degree by his own negligence, has this year committed itself to an employers' liability act on the Massachusetts model, and has gone even a step further, in an effort to limit the conditions under which an employee assumes the risks of his employment. In other States the beginnings of this legislation are seen in the

laws which provide for the protection of the life and the health of the employees by regulations for mines and factories requiring proper ventilation, rules for the prevention of accidents, guards on machinery, fire-escapes on buildings, sanitary appliances, and, in the case of railroads, requiring the use of air-brakes and automatic car-couplers and making the railroad companies liable to their employees for the negligence of fellow-servants in charge of switches or signals.

The multiplicity of these acts emphasizes the growing tendency of our legislation to broaden the scope of the employer's duties to his employees, to increase the employer's liability for all accidents in the course of the business, and to extend the remedies of the employee. This tendency is due, in large part, to the increased political importance of the so-called laboring classes, and particularly the trades-unions, as a factor in municipal and State elections. It is also to be attributed to the sincere efforts of economic students and social reformers to provide a more adequate and certain indemnity to injured workmen and a more uniform and easily ascertained burden to the employer.

It must be confessed frankly at the outset that the present method of adjustment between employer and employee for injuries sustained in the course of the business is not only highly unsatisfactory and expensive to both parties, but is also the source of many influences harmful to the public welfare. The necessity of bringing every accident to the courts to determine the employer's liability and the amount of the workman's indemnity not only involves the waste of time and money to the parties involved, but likewise clogs the business of our courts, demoralizes the bar, and furnishes revenue chiefly to that very large and undesirable class of practitioners, legal and otherwise, who encourage litigation between the workman and his employer. The problem is thus of wide sociological importance, since it affects not only the large number of persons engaged in mining, transportation, and mechanical industries, but also involves the burden imposed upon the community by pauperism due to disablement by accident, the public expense incurred in the occupation of our courts with litigation arising out of disputed liability, and the social and political influences arising from strained relations between the employer and the laboring classes. In our large cities, notably in New York, Boston, and Chicago, the growth of "damage" suits for personal inju-

ries constitutes a serious public evil. It has developed a class of lawyers whose only business is to foster such litigation by means of a circle of conspirators, extending often from the physician who is first called to attend the workman's injuries to the witnesses who are coached to swear to anything that the pleader may allege. The spectacle of the large incomes derived from such practice is one of the most demoralizing influences with which the bar has to contend, and from which its younger members need protection. It is not too much to say also that the institution of trial by jury has been shaken in public confidence by the demoralizing influence of "damage" suits. The flagrant disregard by jurors in this class of actions of their oaths to decide according to the evidence and the law, and their obvious yielding to sympathy with misfortune or to prejudice against employers, has given ground for the impression, now very prevalent at the bar and among employers of labor, that "questions of fact" in damage suits are questions of sympathy or prejudice, and that the jury cannot now be relied upon to secure a just determination of the facts between employer and employee.

As a means of securing actual compensation to injured workingmen, the recourse to litigation has also failed. The usual result of such damage suits is to enrich the unscrupulous lawyer and his accomplices, and to defraud the deluded plaintiff, leaving him estranged from his employer by reason of the suit, and a burden to the community by reason of his disability.

Entirely apart, therefore, from the question whether the present common-law or statutory liability of the employer for injuries to his workmen affords sufficient compensation to injured employees, it must be admitted that the mere attempt to determine that liability by litigation has in itself bred a host of evils, which render necessary some other method of indemnity,— a method which, if possible, will avoid the necessity of a lawsuit to secure compensation for a workman's injury.

It is to be observed that these unsatisfactory conditions, while everywhere prevalent, are especially marked in the States in which employers' liability acts or similar statutes have been passed. The experience of Massachusetts, whose Act of 1887 was the second passed in this country, illustrates that the statutory enactment itself invites a flood of litigation. The judicial construction of the phraseology of the statute has largely occupied the courts of that State; and the same experience has occurred in Alabama,

whose Act of 1885 was the first in the United States. In Maine and New Hampshire, where the common law is the same as in Massachusetts, but where there are no employers' liability acts, the number of actions for personal injuries is relatively much less than in Massachusetts.

The recognition of these conditions very naturally leads to the inquiries suggested as the topic for this paper; namely, Does our employers' liability legislation satisfactorily meet the problem of workmen's indemnity, and, if not, where does it fail?

It is not my purpose to consider the subject merely from the employers' point of view. I would remind President Gompers, whose address we have just heard, that there is no necessary hostility between employers and employees in the solution of this problem. The resistance of workmen's claims by every legal means in the cases to which Professor Brooks has alluded, and even the stratagems of agents of the employers' insurance companies described by Mr. Weber, are the natural and necessary result of the present situation of employers, in which their burden for this class of business risk cannot be determined in advance, and must be treated as an added and unprovided for load upon the industry. From the employer's standpoint almost any reasonable burden of liability can be borne as part of the fixed charges of production, if that burden be made certain and uniform. This was strikingly illustrated by the speech of counsel for the largest liability insurance company in the United States before the Senate committee of the New York State legislature last month, at a public hearing upon the proposed employers' liability act in that State. In this speech the opposition of employers to the bill was frankly declared to be on the ground that the proposed statute would afford certainty neither to the employer nor to the employee, and that, if any change at all were to be made in the law, employers of labor in the State of New York would prefer the uniform compulsory payment of specific indemnities, upon either the English or the Continental plan, to abortive attempts at indemnity through the employers' liability acts. In the larger view, therefore, the interests of employer and employee are mutual in the attempt to devise a satisfactory system of indemnity.

That our opinions may be constructive as well as critical, and that we may test the present statutes by certain clearly defined principles, I venture to define the purposes of intelligent legislation upon this subject, as follows: —

1. The prevention of injuries.
2. Adequate compensation to the injured employee.
3. A uniform and specific burden to the employer.
4. The decrease of litigation.

Incidental to these main aims there are many purposes to be subserved, perhaps not less important. The prevention of injuries must be accomplished, not only by requiring greater care on the part of the employer in the equipment and maintenance of his machinery and appliances, and the employment of competent employees, and the enforcement of proper rules and regulations for their conduct, but also by preventing the growth of a spirit of indifference or carelessness on the part of the employee as the result of the statutory precautions for his benefit. One of the greatest weaknesses of any system of specific and compulsory indemnity for injuries, or of any increase in the statutory liability of the employer, lies in the danger that the workman's sense of personal responsibility for his own conduct may be impaired. The principle of individual responsibility, which is deeply rooted in our Anglo-Saxon law and in our Anglo-Saxon nature, must be nurtured rather than impaired. The employer may well claim that the rule of common law which has so long been maintained in the State of New York, and which denies indemnity to employees who have themselves contributed in any degree to their injury, notwithstanding the negligence of the employer, while occasionally harsh in its application, is, nevertheless, an incentive to care, efficiency, and self-respect on the part of the workman, and may well explain many of the characteristics which have made the American workman distinguished for his efficiency and well-being as compared with any workman under the Continental system. It is the testimony of competent observers in Germany and England, as well as in this country, that the broader liability of the employer breeds a feeling of carelessness on the part of the workman, which invites accidents and impairs the efficiency of labor.

It is likewise important that the compensation secured to the workman shall be certain, and, if possible, specific for each class of injury, to the end that the indemnity shall be a matter of cool and reasonable calculation in advance of the injury, and not the subject of the speculation of a jury.

The importance of a decrease of litigation is apparent, in view of the many evils of our present conditions, to which I have

alluded. The collection of indemnity should be prompt, inexpensive, and, if possible, without recourse to the courts, and without creating friction between employer and employee.

It is no less important that the burden to the employer should be uniform and specific, so that it may be met by the payment of a premium to an insurance company or by the calculation of an additional fixed charge in his cost of production.

With these principles in view we may consider the typical employers' liability acts in this country, which are those of Massachusetts and Alabama, and likewise the last legislative expression on the subject,— the law of New York.

The Massachusetts Employers' Liability Act (Statute of 1887, Chap. 270) is an abridgment of the English Employers' Liability Act of 1880 (43 and 44 Victoria, Chap. 42). It provides substantially that where personal injury is caused to an employee, who is himself in the exercise of due care, (1) by reason of any defect in the ways, works, or machinery connected with or used in the business of the employer, or (2) by reason of the negligence of any person in the service of the employer intrusted with and exercising superintendence, or whose sole or principal duty is that of superintendence, or (3) by reason of the negligence of any person in the service of the employer, who has the charge or control of any switch, signal, locomotive, or train upon a railroad, the employee in such case shall have the same right of compensation and remedies against the employer as if he had not been in the employer's service.

Let us examine the practical effect of these provisions. It is doubtful if the provisions as to the employer's liability for defects in his ways, works, or machinery, at all increase his common-law liability. The learned author of Reno's Treatise on the Law of Employers' Liability Acts, whose work on this subject is unique in this country, declares that the provision which I have quoted made very little, if any, enlargement upon the rights of the employee as they existed at common law in Massachusetts; and this statement is confirmed by the utterance of Mr. Justice Holmes in *Ryalls* v. *Mechanics' Mills*, (150 Mass. 190, 194), who says: "Before the passage of the act it was settled law in Massachusetts that masters were personally bound to see that reasonable care was used to provide reasonably safe and proper machinery, so that, if the duty was intrusted to another and was not performed, the fact

that the proximate cause of the damage was the negligence of a fellow-servant was no defence."

The same declaration has been made in Alabama in construing a similar provision of the Alabama act in the case of *Wilson* v. *Louisville, etc., Railway* (85 Ala. 269, 272).

While no greater protection of law has been secured to the employee by this provision of the statute, it has, nevertheless, invited much litigation. Such questions as what is a defect in the condition, what are ways, what are works, what is machinery, when are they connected with the business of the employer, when used in the business of the employer, and when an employer is negligent in respect of any of them, illustrate the points requiring judicial construction as a result of this enactment.

For example, the words "ways" and "works" have been held to apply only to ways and works of a permanent or quasi-permanent character, and not to those of only a temporary character, although they are connected with and used in the business of the employer; and hence it has been held in *Burns* v. *Washburn* (160 Mass. 457), that a temporary staging put up by masons employed by a contractor to erect a building on the land of a third person is no part of the contractor's ways or works, and the contractor is not liable to an employee for an injury caused by a defect in the condition of the staging. The Massachusetts act on this point, not only fails to extend the common-law liability of the master, but is, in fact, less protection to the employee than is afforded under our so-called "Labor Law" of 1897 in New York, under which, as interpreted by our Court of Appeals in the leading case of *Stewart* v. *Ferguson* (164 N.Y., 553), the master is held liable for the negligence of his employees (fellow-servants of the injured workman) in constructing a scaffold or overhead staging.

Similarly, the provisions holding the employer responsible for the negligence of one exercising "duties of superintendence" have been the subject of the greatest controversy. For example, a foreman of a gang of workmen engaged in piling wood in a saw-mill, who hired workmen at different times and placed the men at work, and sometimes worked with his hands himself, was held, in the case of *Prendible* v. *Connecticut River Manufacturing Company* (160 Mass. 131), to be an employee whose principal duty was that of superintendence and for whose negligence the employer was responsible; while in the case of *O'Brien* v. *Rideout* (161 Mass.

170), a foreman in a saw-mill who, according to the testimony, "kept himself at work pretty much all the time in getting out lumber or arranging it and operating saws," was held to be merely a fellow-servant of the plaintiff, for whose negligence the defendant was not liable. Examples of distinctions as fine as this are multiplied in the Massachusetts and Alabama reports.

The only effect of these attempts to make the employer responsible for the acts of superintendents who would otherwise be held to be fellow-servants of the injured workman has been, in my judgment, to substitute a new *theory* of the employer's responsibility without substantially increasing the protection to the employee. In Massachusetts prior to the passage of the Act of 1887, and in New York State up to the present time, the common law has held the master responsible for the performance of four important classes of duty to his employees, namely : —

1. To provide a reasonably safe place to work.
2. To provide reasonably competent fellow-servants.
3. To provide and maintain reasonably safe machinery and appliances.
4. To provide and enforce suitable rules and regulations for the conduct of the business.

Under these rules the master has been held absolutely responsible for the performance of these duties. If he delegated them to any subordinate, he did so at his peril and with full legal responsibility for the acts of the employee, be he superintendent or otherwise. Our common law has well recognized that where the employer, either personally or through his superintendent, has discharged those duties which the law considers necessary for the protection of his employees, he is not then to be held responsible for the individual acts of his employees, no matter how high in grade they might be. In other words, as our courts in New York have frequently declared, it is the *nature of the act* and not the *grade* of the employee that makes the employer responsible for his negligence. Under the Massachusetts and similar acts the attempt is made to determine the employer's liability for the acts of his employees on the basis of the grade of the employee.

For example, an employer employing 1,000 men may discharge all of the duties which, under the common law, may be reasonably imposed upon him, and which, as we have seen, are not substantially extended by the provisions of the employers'

liability acts; and yet he may be held responsible for injuries caused by *one* of his 1,000 employees who happens to be a superintendent, or exercising the duty of superintendence, while he would not be held liable for the same act if committed by any one of the other 999 employees. This works a manifest injustice to the employer without securing any proportionate benefit to the workman. The important purpose to be subserved is that the workman shall be protected, and not that the employer's liability shall be indefinitely increased. To accomplish this result, the old rule of the common law, which holds the master responsible for any failure to discharge certain absolute duties considered necessary for the protection of his employee, whether the omissions are his own or those of any employee whom he has intrusted with the duty, is clearly more efficient than the provisions of the employers' liability laws which seek to name specifically the individuals for whose acts, in addition to his own, the employer is responsible.

The Massachusetts act further provides that no action thereunder shall be maintained until notice of the time and place and cause of the injury is given to the employer within sixty days and the action is commenced within one year from the occurrence of the accident.

The obvious effect of this short statute of limitations, as it is called, is to hasten the injured workman's resort to a lawyer. The workman is soon educated to this provision of the law, and easily yields to the persuasion of the lawyer's representative, and before the sixty days have expired is usually in an attitude of hostility to his employer, dependent upon his lawyer, and out of employment.

The Alabama Act of 1885, the pioneer act in the United States, is substantially the same as the Massachusetts statute, except that it omits the provision as to notice within sixty days. In Alabama the increase of litigation has not been as great, owing to the greater control that employers have in that State over their labor; but the incongruities and perplexities of the law are equally favorable to litigation.

The New York act is a verbatim copy of certain sections of the Massachusetts statute. It seeks to hold the employer liable for defects in the ways, works, and machinery, and for the negligence of any person exercising superintendence, or whose sole or principal

duty is that of superintendence. The period of notice of the time and place and cause of the injury is one hundred and twenty days instead of sixty days. The distinguishing feature of the act is that its authors, bolder than any who have yet attempted the drafting of liability acts in this country, have sought to define expressly the conditions under which the employee assumes the risk of his employment. No question raised under the English and American acts had led to so much controversy as the question whether by continuance in the employment, with knowledge of the dangers, the employee assumes the risk of injury therefrom as a matter either of law or of fact. It seems now to be well settled both in Massachusetts and Alabama, as held in the leading cases of *O'Maley* v. *South Boston Gas-light Company* (158 Mass. 135, 136), and in *Birmingham Railway Co.* v. *Allen* (99 Ala. 359), that under the employers' liability acts of those States, the same as at common law, the employee assumes the risk of obvious dangers as well as those that are inherent in the employment after the employer has discharged his legal duty in the premises. The greatest difficulty, however, has arisen in attempting to decide whether the employee's assumption of the risk was to be inferred as a matter of law from his mere continuance in the employment. In *Smith* v. *Baker* (1891, A. C. 325) the question was considered by the House of Lords; and the plaintiff's assumption of risk under such circumstances was held to be a question of fact. In Alabama, in the case of *Birmingham Railway Co.* v. *Allen*, before referred to, it was held that, where the plaintiff continued in the defendant's employ for more than a reasonable time after knowledge of the defect, he assumed the risk of injury to such defect; that the maxim *Volenti non fit injuria* applied, and that he could not recover as a matter of law. This decision, therefore, seems to be distinctly contrary to the leading English case. In Massachusetts, while the courts have been careful to decide each case on its particular facts, the case of *O'Maley* v. *South Boston Gas-light Company*, before referred to, is to the effect that the maxim applies as a matter of law.

Upon the question whether the employee, with knowledge and continuance in the employment, assumes the risk of a distinct violation of statute on the part of the employer, the leading English case of *Baddley* v. *Earl Granville* (19 Q. B. D. 423), has held that the doctrine of assumption of obvious risks does not apply.

Into this delicate controversy the authors of our New York law have plunged with the following paragraph: —

SECT. 3. An employee by entering upon or continuing in the service of the employer shall be presumed to have assented to the necessary risks of the occupation of employment and no others. The necessary risks of the occupation or employment shall, in all cases arising after this act takes effect, be considered as including those risks, and those only, inherent in the nature of the business which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees. In an action maintained for the recovery of damages for personal injuries to an employee received after this act takes effect, owing to any cause for which the employer would otherwise be liable, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he had been informed of the danger of personal injury therefrom, shall not, as a *matter of law*, be considered as an assent by such employee to the existence or continuance of such risks of personal injury therefrom, or as negligence contributing to such injury. The question whether the employee understood and assumed the risk of such injury, or was guilty of contributory negligence, by his continuance in the same place and course of employment with knowledge of the risk of injury, shall be one of fact, subject to the usual powers of the court in a proper case to set aside a verdict rendered contrary to the evidence.

This provision must be construed in the light of the decision of the New York Court of Appeals, in the case of *Knisley* v. *Pratt* (148 N. Y. 372), in which it was held that an adult employee, by entering upon or continuing in the employment with a full knowledge of the dangers, may waive, under the common-law doctrine of obvious risk, the compliance by the employer with the provisions of the factory act passed for the special protection of the employee. In that case our court has well pointed out the distinction between the assumption of the risks that are inherent in the employment which the employee assumes only after the due performance by the employer of those duties which the law enjoins on him, and the assumption under the common-law doctrine of such other perils, not necessarily incident to the employment, as are open and obvious to a person duly exercising his faculties.

It will be observed that the authors of the New York act have attempted to avoid the effect of the decision of the case of *Knisley*

v. *Pratt* by providing that the "necessary risks of the occupation or employment shall be considered as including those risks, and those only, inherent in the nature of the business which remain after the employer has exercised due care," etc. But the statute apparently fails to nullify the effect of the court's decision that obvious risks are assumed, whether risks of the employment or not.

The New York act, however, goes on to say that the assumption of risk by the employee who continues in the employment after knowledge of the danger shall in all cases be a question of fact for the jury, subject, however, to the usual powers of the court "in a proper case" to set aside a verdict contrary to the evidence. If this means anything, it must mean that, where the evidence of the employee's knowledge of the danger is undisputed, the court must set aside a verdict for the plaintiff; and the provision that the question is one of fact for the jury thus loses much of the value apparently designed.

It is also to be observed that the employers' liability acts in force in this country, with the exception of the Massachusetts statute, fail to touch the important question of the liability of the owner or general contractor for injuries caused to the employees of sub-contractors. The Massachusetts statute provides (Act of 1887, Chap. 270, Sect. 4) that: —

> If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or sub-contract shall not bear the liability of the employer for injuries to the employees of such contractor or sub-contractor caused by any defect in the condition of the ways, works, machinery, or plant, if they are the property of the employer or are furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person intrusted by him with the duty of seeing that they were in a proper condition.

This provision also fails substantially to enlarge the common-law liability of the employer. You will observe that by its terms the employer is made responsible for defects in works or machinery furnished by him to the employees of independent or sub-contractors, *if such defect arose through negligence of the employer.* This negligence has been construed in the case of *Toomey* v. *Donavan*

(158 Mass. 236), as the personal negligence of the master as distinguished from that of his superintendent. Whether the defect arises through the negligence of the employer in such a case obviouly begs the question of the employer's duty in the premises. If the employer owes no duty to the employee of an independent contractor, he is guilty of no negligence under the statute.

The Maryland act, just signed, is not yet in operation, and, therefore, does not permit of criticism as to its results at this time. It is to be observed, however, that it is limited in effect to mines, quarries, steam or street railways, and the work of sewer construction, excavation, or similar work, when engaged in by incorporated cities, towns, or counties, or by contractors for such bodies. In such cases it entirely abrogates the "fellow-servant" rule, and likewise holds the employer for one-half damages for injury to or the death of his employees, where the injured or deceased employee himself contributed to the injury. It is novel in its provisions that the employer may escape liability under the act by the payment of a specified sum per employee into the hands of the State Insurance Commissioner, who shall disburse them in accordance with the statute. The benefits of this fund are, apparently, payable only in the case of death; and the provisions for its maintenance are imperfect, and, apparently, will be of more advantage to certain classes of corporations in enabling them to limit their liability for injuries resulting in death than of any wide benefit to workmen or of interest to students of the problem.

What is there in the acts, to which I have called your attention, which meets any of the purposes that we have laid down as desirable for legislation of this character?

These acts do not prevent injuries. That has been accomplished in this country largely by our so-called "Factory Acts" and by a system of factory inspection. The employers' liability acts deal with the employer's liability only after he has complied with other laws as to the maintenance and operation of his business.

None of these acts provides a specific compensation for injuries. The question of indemnity is completely ignored. The value of lost time or of a fractured limb is left entirely as a matter of proof to a sympathetic or a prejudiced jury. Whether an indemnity is collectible at all can be determined only by litigation.

Not a line in these acts tends to reduce litigation,— practically, every phrase, if not every comma, tends to invite it.

None of these acts secures any greater certainty or uniformity of burden to the employer. The uncertainty of this burden practically requires employers of labor to protect themselves by liability insurance, whereby the insurance companies are substituted in place of the employers; and, in the event of an accident, the insurance company's adjusters and claim agents seek to secure the injured workman's release on the lowest terms that their shrewdness and plausibility can procure. This system is open to many and serious objections. In the first place, the employer, having paid his premium to the insurance company, frequently becomes careless of his duty to his employees, and neglects even the statutory regulations for their protection. Not even the possibility that he may have to pay a larger premium in a future year, as the result of his present indifference, is a sufficient incentive to care, since, as a practical matter, the competition among insurance companies is such that almost any employer, careful or careless, can find some company to insure him. In the next place, the insurance companies, except the so-called "Mutuals" in Massachusetts, maintain no physical inspection of the premises covered by their policies; and they are thus unaware of the violation of statutory regulations until the accident has happened and the claim of the workman is presented. In the third place, the insurance adjuster has no personal relation with the employee; and the employee's claim naturally becomes a matter of barter and sale, to be defeated entirely, if possible, by all the evasions of the law. The workman, once having released his claim, is as likely as not to be discharged from his employment, and thrown upon the community, with an insufficient compensation for his injuries. It often follows, likewise, that the employee, knowing that his employer is insured, and does not, therefore, bear the burden of his indemnity, is easily tempted to present his claim for compensation, regardless of its merits, as a speculative attack upon the insurance company; and in some instances there is actual collusion between the employer and the employee at the expense of the insurance company, in the first instance, but ultimately at the expense of the employer and the employee.

The field for liability insurance companies in this country and in England is a legitimate and constantly growing one. Under an

intelligent system of legislation they would enable many small employers to bear the burden of a compulsory indemnity to their workmen. With the great consolidation of industry now in progress in this country, it is probable that the larger corporations, as the Carnegie Steel Company and several of the railway companies have done, will supply and administer their own insurance funds; but there will probably always be a large number of industries too small or too scattered to bear their own insurance burdens, and which will be greatly relieved by employers' liability insurance companies. From the standpoint of these companies the employers' liability acts, as at present in force, are a serious menace to their prosperity. The constantly changing laws and the ever-widening liability of employers to be assumed by the companies under their policies, together with the uncertain cost of claim adjustment in the absence of any specific indemnities for injuries, prevents that certain calculation of premiums which is possible in life insurance. Without this, employers' liability insurance must always be a speculation, trusting to the ingenuity of its managers and adjusters, and not to that sound actuarial basis on which all insurance funds should rest.

It is also to be observed that the present system of liability insurance does not afford employers complete protection against their legal liability to employees. The employers' liability policy, which is practically uniform throughout the United States, limits the liability of the insurance company to $1,500 or to $5,000 for one person killed or injured in a single accident and to $10,000 for any number of persons killed or injured in one accident. The employer, therefore, is always to some extent a co-insurer of this risk; and, with the present uncertainty as to his liability, he can never completely guard against it.

In conclusion, the defects of the existing employers' liability legislation in the United States may be summarized as follows: —

It does not tend to prevent injuries.

It does not provide specific indemnities.

It does not secure greater certainty or uniformity of burden to the employer.

It does not avoid the cost of litigation to determine liability or to ascertain indemnity.

It attempts to abrogate the so-called "fellow-servant" rule by naming superintendents and others for whose acts, in addition to

his own, the employer is responsible; and in so doing it imposes an unjust burden upon the employer without substantially enlarging the common-law protection to the employee.

It hastens suits against the employer and increases friction between employer and employee.

It is a menace to insurance funds by its lack of stability and its failure to provide specific indemnities.

It has invited years of litigation and expense without securing the results for which it was devised.

It leaves open the important questions of controversy under the common law; to wit, the employee's assumption of risk, the employer's liability for the acts of fellow-servants, and the owner or general contractor's liability for injuries to employees of an independent or sub-contractor.

It ignores the experience of the older countries with similar legislation.

The objections to employers' liability acts in their present form are not peculiar to this country. The German Act of 1871 was open to many of the objections that I have here raised to our legislation. For twenty-three years and until the passage of the German Accident Law of 1884, employers and employees were involved in such constant litigation and friction that the question assumed social and political importance, and induced Bismarck to promote the system of compulsory insurance now in force in that country.

The English Employers' Liability Act of 1880 was attended with the same consequences. The number of accidents did not decrease, workmen did not secure compensation, litigation was increased, and employers were called upon to pay more for lawyers' fees, even in the successful defence of their suits, than would have been needed to pay the specific indemnities now provided by the Workmen's Compensation Act. It was doubtless these reasons which prompted Mr. Asquith to call the Act of 1880 a "scandal and a reproach to the legislature,— an elaborate series of traps and pitfalls for the unwary litigant, and producing litigation which, in proportion to its difficulty and cost, is absolutely barren of result."

In view of these results for a generation on the other side of the water and for nearly as long in this country, students of the question may well be surprised that no more intelligent progress

has been made in the treatment of the problem in this country than is indicated by the abortive and mischievous measure lately enacted into law in the State of New York.

In my judgment, the time has come for the promulgation in this country of an act on the lines of the English Workmen's Compensation Act, modified by the provisions of the German insurance laws, which require the employee to contribute in part to the fund from which the indemnity is payable, and which provide for a representation of the employee in the agency through which the indemnity is awarded, thus giving the employee a distinct personal interest to avoid injury or the simulation of injury, either by himself or his associates. The act should provide compulsory specific indemnities, collectible promptly, if possible without litigation. Its provisions, when once accepted by the employees of a particular establishment or a number of establishments associated in a particular industry, should relieve the employers from all other legal liability. The indemnities to be paid for specific injuries, loss of time or loss of life, should be based, where possible, upon the wages paid; and the indemnities should be paid either out of a fund to be maintained by the joint contributions of the employer and the employee, or by insurance, the premiums for which should be paid jointly by the employer and the employee. The indemnity should be awarded by a special board, including representatives of both employer and employee, or, in the event of insurance, should be awarded on proofs of loss verified by both employer and employee, with proper precautions against fraud.

There is no wide demand in this country, so far as I have observed, for legislation of this advanced character. We are still following blindly the expensive experience of Germany and England. I venture to suggest that this Association, or one having a similarly national character, attempt to secure the appointment of a joint commission, composed of representatives from the leading manufacturing States, and which will be charged with the duty of preparing a compensation act, and submitting it to the legislatures of their respective States for simultaneous action, if possible. Under present constitutional limitations, the subject must be one of State control, except so far as Interstate Commerce agencies are concerned; but it is greatly to be desired that there be uniform action among a number of States to meet the objection that would probably be raised by the employers of any single State upon

whom the added burdens might be imposed. The interests of master and man alike demand that an intelligent effort should be made to educate public sentiment on this subject, to the end that we may avoid the errors of the older countries and place the burden of accident in industry on a permanent and equitable basis.

At the conclusion of Mr. Burnet's paper, Hon. Carroll D. Wright, Mr. Edward D. Page, of New York, and Mr. Charles H. Litchman, a member of the United States Industrial Commission, offered extended comment. Their remarks are appended in the order named: —

Mr. WRIGHT.— I believe it is a rule in most courts, at least it is a custom, that counsel shall not quote elementary law to the court. The court is supposed to know elementary law; and yet this morning, in going out of the hall, I heard the remark once or twice: "What is all this about? What are the fundamental principles of the discussion?" It is rare that we can listen to a group of papers such as those that have been presented to-day, and find them all so able and so suggestive; but each speaker, very properly and logically, because he had a phase of the subject to discuss, has not given the audience the basis of the difficulty. Most of you understand precisely what all these able speakers have been talking about: some of you may not. I shall, therefore, Mr. Chairman, take the privilege of quoting some elementary law to the court, and this will give the state of the case,— why this discussion during the last twenty-five years or more has been thrust upon communities both sides of the Atlantic.

Wherever the Roman law has been grafted upon the common law of countries, wherever the precepts and principles of the Roman law have been followed, the doctrine of *respondeat superior* has obtained.

The principal is liable for the act of his agent, under that law maxim, *Qui facit per alium, facit per se.* This doctrine held until about 1837. It was the common-law rule that, if the agent of the principal did an act which resulted in an injury to another, the principal became responsible in damages for that act precisely the same as if he had performed it himself. A change came in the common law about 1837. The first case was in England, that of *Priestly* v. *Fowler*, wherein it was held by the court that, in accordance with this old common-law principle that the agent's acts were the acts of his principal, if there were two agents employed and one was injured through the carelessness or negligence of the other, there could be no damage against the principal, because these two men were fellow-servants. This was purely judge-made law: it was the decision of the court. To illustrate: if a man were driving a wagon and he was the agent of the manager of some concern, and injury was received by a pedestrian through the carelessness of the driver, the person injured could recover damages from the principal; but, if the driver had with him a fellow-employee and the latter received injury by precisely the same

action, no damages could be recovered from the principal. This judge-made law was sustained by Chief Justice Shaw in Massachusetts in the well-known case of *Farwell* v. *Boston and Worcester Railroad.*

There was not much attention given to the matter then; but, as time went on and the factory system was extended, it became apparent that there was some absurdity in this fellow-servant principle announced by the court in 1837 and followed in 1842. Under the old system of domestic labor there was some reason for it,— where the employer and his journeymen and apprentices worked side by side, and each was supposed to know the character of his shopmate; and it was on that ground that the court held that each was aware of the weaknesses of his associate and knew how to guard himself against them, and that fellow-employment, co-employment, relieved the master of his responsibility for damages.

Now apply that principle under the factory system or the modern industrial system. Apply that rule of the courts to the case of a brakeman who, starting at Baltimore on the Baltimore & Ohio Railroad, employing at one time 40,000 men,— I do not know how many now,— receives an injury at Harper's Ferry, ninety or one hundred miles from his place of departure, through the carelessness of a switchman whom the brakeman never knew, never saw, and never heard of. Under the old principle of co-employment, as applied by the courts under the common-law rules, this brakeman could not recover damages of the Baltimore & Ohio Railroad, because he was a co-employee of the same principal with the switchman at Harper's Ferry who caused the injury. A passenger on the road, however, could recover damages for the same accident. This shows the absurdity of the principle, and all great lawyers on both sides of the Atlantic have recognized it; and it was the attempt to break this common-law rule of fellow-servant co-employment that brought about this discussion which has so thoroughly interested us to-day.

It does not matter, it seems to me, when the discussion started, or what are the particular elements of it, or whether the laws that have been enacted have been successful or unsuccessful. It is one of the attempts of society to overcome a great economic evil. We hear in the discussions of economic questions something about economic insecurity,— that is, the insecurity of the operative and the employee under the modern system of industry; and the efforts to abrogate the common-law rule of co-employment were efforts, puerile and fallacious in many respects, to obviate this difficulty in modern industry. Those efforts, together with others, led to the establishment of some compulsory insurance law.

I agree with almost everything that has been said to-day; and yet I do not care much about it, because this is a public question which goes deeper than law, deeper than the dicta of courts, deeper than any legislation or the success or failures attending it. It is a question of public interest, of society's interest in its own protection; it is an ethical question as well as an economic and legal one; it stretches out in very broad ways.

The last speaker, in his exceedingly able paper, and one of the speakers this morning, perhaps two, gave the suggestion of the keynote in this whole matter. It is no use shifting responsibilities. It is of no use to say that the tax shall be paid by A instead of B or by C instead of D: the tax must be paid.

In the discussion of such questions as this we can have no sympathy with the statement of Herbert Spencer, in his work on Justice, that, when the police functions of government are no longer required, there will be no more government. This very discussion has emphasized in a very grand way the fact that government has some function besides that of what Mr. Low called the night watchman's duties. It has something to do in the interest of society to-day; and that is to protect society against this very question of economic insecurity resulting from accidents, sickness, and old age. The Germans have attempted it in their way: the English have attempted it in their way, following in some ways the German principles. We have not attempted it to any great extent in this country except through the laws we call employers' liability laws, the main purpose of such laws, in the initiative, being to abrogate the doctrine of co-employment. If economic insecurity is to be guarded against by employers' liability laws or any other laws, it seems to me wise, from an economic and ethical point of view, that society should pay the bills. It is simply a question of the renewal of the forces which are essential to industrial production. The manufacturer does not hesitate to add a percentage, which he sometimes estimates and which he sometimes knows, to his account of costs, under the title of depreciation of plant; and the public, the consumer, pays that percentage of depreciation. Is it not logical that the depreciation of men should be charged in the same way? Machinery, when it wears out, must be replaced by new, and charged to the consumer, and men, when their limbs are fractured or their lives are lost or they are too old to be employed, are economically in the same position; and should not the cost of maintaining them decently be charged to the cost of production? If this principle be true, — and every speaker has announced his adherence to it,— does it matter who pays the intermediary costs?

The Germans undertake to get rid of this matter by letting the employee pay one-quarter, the employer a quarter, and the State the balance, or substantially those proportions; but society pays the whole 100 per cent. It does not matter in what proportions you adjust this: it must eventually be adjusted, and society must eventually pay the bills.

This is an exceedingly serious question, one of the most serious economic problems that exists to-day. Society has a duty to perform, and its duty is to see to it that some system is adopted by which this economic insecurity can be avoided. Then the difficulties grow greater and greater. This whole discussion to-day has been an emphatic illustration of the truth that, whenever you attempt to solve a problem in society, and succeed a very little, you open fifty or a hundred other problems more complicated than the one you undertook in the initiative. It is the duty of society to face these problems, and to do all it can toward helping them along step by step; and this thought leads me to the last paper.

Suppose everything that Mr. Burnet has said is true, and that all his criticisms of existing laws are sound, what of it? These systems do not grow in a minute. It takes just that process through which he has so ingeniously and ably led us in his paper, to bring about satisfactory results in the end. And society should not be blamed because it does not secure or succeed in obtaining a thorough solution of these problems. Society wants a solution, and it

should always be blamed when it makes no attempt to secure the solution. Its business is always to attempt solution, and in the various attempts it makes it will meet difficulties and complications far greater than was expected. It should go on just the same, however; and out of such difficulties and complications there grows some enlightened plan by which the immediate steps are clearly observable. So we need not be discouraged because the employers' liability laws of this country or of England are not now satisfactory. They are great steps toward a solution. Whether the recent Workmen's Compensation Act of England is the ultimate solution of the problem, remains to be seen. There are so many difficulties connected with that law, as Mr. Low pointed out, that one can hardly bring himself to say that that particular law, even made to suit American notions, is the real solution. But it is a great step in the right direction.

So we may be encouraged. We may feel that an association like this, in thus discussing these difficult matters, is doing something in the way of propagandism of right principles. We must keep our heads, and not get crazy over the desire to bring perfection at once. Industry is too complicated for any such hope, but industry is not too complicated for society to try to help it in all its great problems.

Mr. PAGE.— This morning Mr. Low and this evening Mr. Burnet have called attention to the fact that the employers' liability law and the workmen's compensation acts are not correlated in their scope to the intent and purpose of the legislature in framing them. Obvious as they appear to be, in order to correct an injustice and to assess, as a part of the cost of production, upon the consumer, in the price of the product, the waste of human material, just as heretofore the waste of machinery and of plant has always been assessed in the price of the product, their social and moral consequences are very far-reaching and as yet almost unknown. I am going to make an effort, at least, to propose some questions regarding the social and economic and moral consequences of the accident insurance and accident compensation acts as we know them in practice.

As a matter of fact, there are only three of these laws which at present yield any results,— that of Germany, which has been in operation some fifteen years; that of Austria-Hungary, which has been in operation some thirteen years; and that of Great Britain, which has been in operation since July 1, 1898. Fortunately, in relation to all three of these acts there have been collected at the present time a body of statistics and a body of opinions which may at least enable us to go a little way in the determination of the question whether these acts in their social and moral consequences are favorable or unfavorable to the community.

In the first place, is it a consequence of these acts that employers and manufacturers — those controlling machinery — are induced thereby to make a greater effort to make the operation of those plants safe? I was talking this morning with the president of the Massachusetts Mutual Employers' Liability Insurance Company. He tells me that his company requires a high standard of safety in the operation of all of the plants; that their inspectors are constantly going about, and are dropping in upon manufacturers at unexpected moments; that they make from two to three inspections annually, and that

almost all of these inspections are followed just in the same way as the inspections of the mutual insurance companies, and of the old line insurance companies for that matter, by calling attention to methods of reducing the cost of damages. I think that one has only to remember that insurance companies are always, in the matter of fire insurance, endeavoring to economize their risks by the requirement of additional protection, to feel fairly certain that in regard to accidents the same course will follow, although up to the present time it is to be admitted that the inspections of these mutual companies have shown comparatively little interest in this country in the matter. I am not informed as to their acts in England.

The next point — and it is a social point — is the avoidance of litigation. In spite of Mr. Burnet's dark picture of the effects of the Massachusetts act in this particular, my information, coming principally from cotton manufacturers, is somewhat at variance with the opinions which he has obtained from the legal profession. Their opinion appears to be that the employers' act of Massachusetts, limited as it is in its application, is nevertheless an avoidant of litigation, and that the manufacturer is able to arrive at the cost — or as near as there is any possibility of arriving at it — of those elements which can be considered a part of the cost of production. They say that in that respect it is quite satisfactory, and they are quite astonished to find out how cheaply it can be done. I do not say astonished, because I know how cheaply it has been done in Great Britain under a very much more comprehensive scheme of compensation. In Massachusetts, in other words, in a mill with which I happen to be familiar, the premium is three-tenths of 1 per cent. on the pay-roll. The pay-roll is $400,000, and the actual cost of insurance is therefore $1,200. The production of the mill is very close to $2,000,000, and therefore the entire cost of insurance against accident in that mill is really six-hundredths of 1 per cent. on the price of the merchandise. Surely, such a small contribution as that is not a very material deterrent to manufacturers in supporting some such measure as has been outlined by the previous speakers.

In the London *Economist* of March 15 last there were given a number of premiums charged by the English insurance companies for insurance under the Workingmen's Compensation Act,— an act which, as you have been informed, is very much broader than the Massachusetts act. I will state a few of the premiums — all of them per £100 sterling. In a brass foundry the present premium for full compensation is 5 shillings per £100,— about three-quarters of 1 per cent. It has been as low as 4 shillings per £100, which is about one-tenth of 1 per cent. Many of the industries in Great Britain are insured under this Workingmen's Compensation Act at one-tenth of 1 per cent. or thereabouts, sometimes at two-tenths of 1 per cent. The premiums have been recently raised, though, because the companies were doing business too cheaply; but they have been apparently making some profit at the terms quoted by this same paper.

In Germany I find that in 1898 there were £44,759,000 sterling of wages, and compensation actually paid on that pay-roll was £1,004,704 sterling, about 2¼ per cent. So, when we consider that the pay-roll is only one item of the cost of production, it does not appear as if the addition to the cost of the merchandise would be a very serious item, even under the most liberal laws, such as prevail in Germany.

The next question is — and I am only going to state it: I propose to bring it up in a moment — as to whether employees exercise any greater care under the German and English acts. It is quite an important point, but I would rather bring it up later in another connection.

Of course there are moral consequences to individuals,— in the first place, the moral consequences of laws like these to the employer. It seems to me — and it is confirmed by what little experience I can get together on the subject — that, in spite of some exceptions, the moral consequences to the employer are good. They involve a recognition of the legitimate rights of his employees, which have for some time been unrecognized. They avoid for him the wear and annoyance of continual disputes,— disputes which are aggravated in most instances, as Mr. Burnet has stated, by the activity of irresponsible attorneys who are constantly on the outlook for any one injured, and whose usual form of compensation is a contingent fee, generally one-half of the amount recovered. I have had some experience along that line myself, for I happen to be in the street railway business as well. I think that frankness and openness in dealing with the employee is encouraged, if it is well known, and a matter easily fixed, what compensation is to be paid when an accident has happened.

The most important point of all, however, is, What is the effect on the employee? There are a thousand employees, as a rule, perhaps to one employer, or at all events a great many; and, therefore, the effect on the community, the effect that is produced on the employee morally,— if there be a change in his moral nature produced by these laws,— is even greater than any effect that can be produced upon the employer. It is in this connection that I want to point out that the chairman of this section first called attention to a fact that was well recognized quite early in insurance laws, both sickness and accident,— that national insurance had introduced entirely new conditions under which human nature may take on quite other qualities; and he spoke of a dangerous increase of stimulation as following compulsory State controls. It is really in relation to that matter that I have collected a few facts.

The first thing that strikes a person who looks over the statistics of accidents, either those furnished by the German Empire or by Austria-Hungary or by Great Britain, is that immediately upon the passing of such acts as have been enacted there takes place a very extraordinary increase in the number of accidents. The German Empire divides its accidents under fatalities, accidents involving permanent disability and accidents involving only temporary disability. The Austrian statistics are of the same sort. Great Britain, however, gives only fatalities and accidents not fatal. It is in the class known as accidents which are not fatal or involve only temporary disability that the most marked increase has been shown. For instance, in Germany in the years 1892 and 1893 — I have averaged the two years, so as to avoid the possibility of some great accident or some particular conditions making a peculiar record — the average number of accidents involving temporary disability was 16,356, while in 1898 and 1899 it was 42,164,— an increase in those six years of 25,808. The German Empire gives also the number of accidents per 10,000 persons employed in 1892 and 1893. The number of temporary accidents per 10,000 employed was 9.05; in 1898, 22.85,— an increase of 13.8,

or 152 per cent. in six years. If these figures be extended over a ten-year period, the accidents involving a temporary disability increased 387.7 per cent. It is a very remarkable thing that slight accidents, accidents involving a temporary disability, could possibly have quadrupled in ten years.

The same facts are true, in a more limited way, in the experience of Austria. In 1892 and 1893 there were 6,818 accidents involving temporary disability; in 1898, 15,168,— nearly three times as many.

In Great Britain we have the evidence of four years. In the year 1898 the accidents that were not fatal numbered 49,416. In 1901 they had risen to 72,358,— an increase in three years of 22,942, or 46.4 per cent.

The question is, What is the inference to be drawn from this extraordinary increase of accidents involving a temporary disability? Are they fictitious? Are they due to intentional disability by the workman? Has he injured himself, in order to obtain compensation? Are they due to more perfect statistics? Are they due to the addition of new occupations to the list of those compensated, whereby there may be a larger percentage of non-fatal accidents? Are they due to a more perfect understanding of the opportunities of the law by the working classes? That was the belief of the French commission which investigated the subject, but it hardly seems possible to me that such result could be attributed to an imperfect understanding of the opportunities; for, if the workmen do not learn what their opportunities are in eight years, they never will learn. My experience has been the other way. The rapidity with which they find out what they can do, and the schemes they work, will do credit to Wall Street.

Is it due to the adoption of more dangerous machinery by manufacturers or less care in its operation? I have, in a way, an answer to that question. By comparing these accidents which involve only temporary disability with the increase of accidents involving death,— fatality,— I have arrived at a percentage which, I think, can be safely assumed to be a normal percentage of increase, eliminating most of the possibilities which I have suggested. In the German Empire there was an increase of 1 per 10,000 in the same years that I have quoted for temporary disability, which is 30 per cent. Deducting that figure from the record of the accidents involving a temporary disability in Germany, which was 152.50 per cent. the same years, leaves an excess of temporary disability accidents of 122.50 per cent. That, really, is the figure to be accounted for by some theory or another.

Looking at Austria-Hungary, the fatal accidents increased relatively to the number of hours worked 6.8 per cent. Deducting that from their increase in the disability accidents — 47.50 per cent.— leaves 40.8 per cent. to be accounted for.

In Great Britain the number of fatal accidents increased in the four years of which we have a record 39.9 per cent. We find that the non-fatal accidents increased 46.4 per cent. Therefore, in Great Britain the excess of non-fatal accidents was only 6.50 per cent., which is a very inconsiderable figure. That leads me back to the question of which of these three kinds of laws — the British, the Austrian, or the German — is less likely to produce a deteriorating moral effect on the character of the workmen,— the Austrian, which shows an excess of only 40 per cent. (which, as you see, is one-third of that of the

German), or the British, with practically no excess whatsoever. It seems to me, therefore, that we can classify the results of these three laws on the increase of non-fatal accidents as being very bad in Germany, not very bad or not so bad in Austria, and best of all in England.

That brings us back to the question, Why is this? I can only ask questions. I do not know of any one who can answer them, but I should be very glad if some one here could answer them. One question is this, Is it the insertion of the negligence clause in the British act and the entire reliance of the injured employee on the help of his trade union for the first two weeks that make the difference? It will be remembered that this is a peculiarity of the English act. The reliance of an injured man on a trade-union fund, it seems to me, for at least a portion of the compensation extended in case of accident, is a very important feature. Suppose the man belongs to a trade union of forty individuals, all of whom contribute to this fund. Supposing he is laid up by accident; supposing they know that for the first two weeks they have got to support him. That man is not half so likely, it seems to me, to deceive them. Those men have quite an interest in their fund: they do not propose to contribute anything if they can help it. The chance, it seems to me, of his deceiving them is much less than of deceiving his employer. Again, if it is provided in the law that where the workingman is not entitled to the compensation, in case it can be shown that he wilfully or negligently committed injury, is it not perhaps some safeguard against his doing so?

It seems to me that this raises the question also, Is not the general plan of the British law, involving a payment first from the trade union and secondly from the employer, both of whom have a personal interest in keeping it as small as is reasonably possible, a much better plan than the payment of his insurance through the post-office officials, who are naturally looking for votes for the government, or the government in other forms, as in Austria? Is not, perhaps, a portion of this peculiar situation due to these facts? That would lead me to suspect that the dictum of Colonel Wright, to the effect that it does not make much difference how the waste of men shall be adjusted, whether partly by the State, partly by the workmen, partly by the employer, or all by the employer, so long as society pays the bill, may possibly be questioned. At all events, in the administration of the affairs of the State and the balancing of forces between individualism, on the one hand, and socialism, on the other, it behooves us to make an investigation that will adequately answer these questions before we go very far in this country in the direction of a workingmen's compensation act that may be of great value or of great ill.

Mr. BROOKS.— Just in proportion as that German scheme has been properly organized and accidents thrown under the supervision of the authorities, it has brought to the front tens of thousands of accidents that always happened before, but are now simply brought to light; and it is one of the possible advantages of that law that there are more accidents than ever. I should enlarge upon that a little more if there were time.

Mr. LITCHMAN.— I was a little amused at the opening remarks of Colonel Wright when he deprecated the necessity of giving a little instruction in elementary law; and it reminded me of the anecdote of counsel who had a case in a higher court, and was laying down the principles of elementary law,

when the court interrupted him, and said, "Mr. Brown, the court may be supposed to know the principles of elementary law." Replying to the court, Mr. Brown said, "I made that mistake in the lower court, and that is the reason I am here." So it is perhaps well to lay down a few general principles at the start, and then the argument is more clearly understood by those to whom you are speaking.

In the brief time at my disposal I am going to handle this question from an entirely different standpoint from that which was used by any of the speakers this morning or any of them this evening. Professor Brooks has been kind enough to refer to my service in the cause of labor and on the Industrial Commission, and I want to say that I got some of the best education I have ever had in my life on the Industrial Commission. My view has therefore been formed by both classes of service, and it is the point of view from which you regard these questions that your decision is sometimes warped and sometimes unbiassed.

When we criticise trade unionists for not welcoming these measures for the relief of labor which we, in the kindness of our heart and from good intention, present to them, we must remember that they have come up to the present condition of wage labor through five centuries of constant agitation from the condition of serfdom in which labor then existed. It has taken five hundred years to raise labor from that condition; and nothing has been gained in all these five centuries, in the opinion of the trade-unionist,— justified to some extent, perhaps, — except after bitter and long-continued opposition on the part of the employer, or on the part of society in general, especially the so-called vested interests. Hence they are suspicious of schemes ostensibly for their benefit which do not emanate from them or their union friends. Here is one of the difficulties which will be encountered by your society, Mr. Chairman, in reaching a responsive echo in the heart of workingmen; and here again is the difficulty that leads them to antagonize plans like that in Great Britain. And the suggestion made by Mr. Low in his very able paper this morning, and in the questions asked and in the reply of Mr. Gompers, emphasizes the fact that the trade unionist objects to any plan that requires him to contribute and yet does not protect him from discharge by the employer; and that will be, in his view, a fatal defect in any plan that may be proposed for a compensation act under any government, whether it be in Great Britain or in this country.

You will find another difficulty; and I want you to consider that what I am about to say has no personal relation, but is a statement of the fact. Trade unionists have ever been a little suspicious of professional men. They have not considered that professional men had anything in common with the man who obeyed the divine injunction that "in the sweat of thy face shalt thou eat bread." They have not been able to see how professional men could have anything in sympathy with them. This view was emphasized in the organization of the Knights of Labor away back in 1869; and although that organization provided, to a limited extent, for the admission of employers,— being unique among labor organizations in that respect,— yet, when the General Assembly was formed in 1878, but for the efforts of a few of us of cooler heads and wider knowledge, there would have been incorporated in the laws

an absolute prohibition to membership of all professional men. The laws did contain a prohibition of doctors and ministers; but we finally included those classes, and limited it to rum-sellers, gamblers, and lawyers. That needs a little explanation, Mr. Burnet. We eliminated gamblers and rum-sellers because they were regarded as parasites on communities. We eliminated the lawyer because we were afraid of him. We considered that, if he came in, he would boss the job; and we wanted to do that ourselves, and so the lawyer was excluded. It was considered that the lawyer would advocate sometimes a wrong side just as eloquently as he would the right side, if the fee compensated for the effort. That may be an unjust judgment of the legal profession; but I think the arraignment that has been given the legal profession by Mr. Burnet to-night goes even far beyond the action of the General Assembly of the Knights of Labor, by which lawyers have always been excluded from that organization.

The conditions under which labor is performed at the present time differ very materially from those in bygone days, and the elements affecting employment differ from year to year. I am a shoemaker by trade, and I frequently use my own trade as an illustration of the change in my lifetime. The production of shoes has witnessed a complete revolution. As Colonel Wright well knows, in the early fifties, perhaps as early as 1845, the sewing-machine was invented; and in my early boyhood days that was the only machine used in making shoes. I have seen the statement, which I think is approximately correct, that to-day we have eighty machines used in the production of shoes. By the introduction of machinery there is coming a competition of the labor of women and children with the labor of men. This is bringing a degradation of labor in the first analysis by the subdivision of labor, and the supplanting of the labor of men by the labor of women and children. Here, again, let it be said to the credit of the Knights of Labor as an organization that it was the first organization of which I have any knowledge that demanded equal pay for equal work, whether done by men or done by women. That organization never believed that because the worker was a woman she should be paid less for exactly the same work than a man should be paid.

Another element that affects the employment of labor is immigration; and, if I had the time, I would like to elaborate on that point. In the brief time at my disposal I can only touch upon these main features, and leave it to your own judgment and knowledge to carry them to their logical conclusion. We will this present year, in all human probability, receive not far from 700,000 immigrants into the United States. We took on 550,000 the last fiscal year; and we are taking in a large percentage of increase, sufficient to indicate fully 700,000, for the coming fiscal year. Nearly 80 per cent. of this immigration concentrates on the Atlantic seaboard. But the most startling of all facts in connection with this element affecting employment is that from 40 to 70 per cent. of the immigrants cannot read and write, so that immigration is not only affecting employment, but is a menace to American citizenship and the standard of American civilization.

Labor is also more intensive and exhaustive under the modern conditions of employment; and here is the justification for the agitation going on at the present time, and that has been so successful and ought to be so success-

ful, for lessening the hours of labor, because in that way,— I was about to say alone,— in that way largely, certainly, can come some compensation to labor for its intensive toil, for the introduction of machinery, and for the other difficulties with which it has to contend. Employments are more dangerous, as has been suggested in this discussion, by the introduction of highly perfected machines of almost human ingenuity in their operation. Many of the processes of manufacture are being made automatic, and human toil only of that class in which very high skill accompanied by very high danger is employed. The ratio of unavoidable accidents in a given employment may be lessened, of course, by safety appliances. This is apparent in the safety car-couplers and appliances that law has compelled to be adopted on railways. It was not until the law made it cheaper to put a safety car-coupler between the cars than it was to kill a brakeman that the railroads put safety couplers between the cars. By and by public sentiment will arrive at that point where law will make it cheaper to put a guard-rail on the top of a freight car instead of allowing a brakeman to be knocked off by an overhead bridge or to slip from the top of a car on a slippery, icy night. Then we will have a guard-rail that will help to reduce these more than 2,500 fatal accidents among railroad employees on the railroads of the United States.

One thing that I believe has made the plan in England seem to be successful in the four years of its operation — I use that term "seem" advisedly — is the fact that they are placed under the operations of the Friendly Societies Act of Great Britain. After a period of ten years, after a period of depression, as has been wisely suggested in this discussion, we will be better able to judge of the success of the English plan; but they are under the Friendly Societies Act, and I wish the friendly societies of the United States, of which the Knights of Pythias, the Improved Order of Red Men, the Odd Fellows, and kindred societies are examples, were under similar supervision and similar regulation. Briefly stated, under the law of Great Britain these societies are under the supervision of actuaries appointed for the purpose. They are compelled to report to the registrar, and to assess upon their own members an amount equivalent to the promise in benefits to be paid. In the States our get-rich-quick societies, in benevolent directions as well as in others, make promises which are carried out for a few years, until old age increases the expectancy of sickness the same as the expectancy of death; and then the organizations fail and drop by the wayside. Under the law of Great Britain this cannot take place, and I think that perhaps some of the success that has come under this law is due to the fact that they are under the rigid supervision of the Friendly Societies Act of Parliament.

Some of these things to which I have referred are reasons why labor organizations are suspicious of plans which, in their judgment, leave them defenceless against their employers and defenceless against peremptory discharge when it becomes to the interest of the employer to discharge them, or when, as will be the case, there is an accumulation of their contributions to an insurance fund of sufficient size to make it an object to discharge them and get rid of them, under the tentative plan suggested in Mr. Low's paper. I think that it will be a long time before you can educate trade unions to any indorsement of any plan of that kind. They are against these plans until you can

suggest some way in which the rights of the workingman will be protected, and whereby he will not be exposed to peremptory discharge on the part of the employer. All these railroad schemes of insurance are opposed by trade unions generally, because they are considered simply as compulsory schemes on the part of the railroad managers to compel their men to continue employment upon the railroad.

In that same direction I will call your attention to two very significant decisions that have recently been made, one of them in relation to baseball employment and the other found quoted in the *Star*. The latter decision relates to an injunction granted in Cincinnati, under which certain workmen are enjoined from leaving their employment. I have not time, of course, to elaborate; but the principle of those two decisions is this: if the decision in the baseball case holds good, it is possible practically to condemn a man to perpetual slavery. All that it is necessary to do is to induce him to make a contract such as that made by the National Baseball Association. While those contracts were drawn for two years, with the privilege of renewing them, they actually renewed themselves from year to year, containing a reserve clause under which the services of the player were held perpetually so long as the individual to which the reserve services were due saw fit to hold him to the contract. That would be about as near perpetual employment as you could get. Under the decision at Cincinnati, which will be fought by the Federation of Labor, a man has no right to leave employment: he can be enjoined from leaving his employment. That may be good law, but it is not good American citizenship; and I think will not be sustained by the public sentiment throughout the United States.

II. DEPARTMENT OF JURISPRUDENCE.

In the absence of Judge Wayland, Chairman of this Department, the Hon. Frederick J. Kingsbury presided at the session, and offered the following introductory remarks: Judge Wayland, who has been the Chairman of this Department of the Association for more than a quarter of a century, is kept away from here at this time by illness. He very greatly regretted to be obliged to break his record, but it is impossible for him to get here; and I have been asked to preside over this section in his place.

I have nothing particular to say in an introductory way, except that it did occur to me that one of the speakers last night made several remarks which to some extent showed the impression of the ordinary layman in regard to the legal profession. He spoke with eloquent disparagement of the idea of a lawyer arguing on the side that he was paid for. I think that is a very popular prejudice, and one that is wholly unfounded with anybody who understands the nature of our perhaps crude endeavors to get at justice; but any judge that has got to make up his mind and give a decision and any jury that have got to decide a question of fact want to know, or, if they do not want, they ought to want to know, everything that is really pertinent to the case on both sides. It is the Anglo-Saxon method of determining what is right and just, and I am inclined to think it is the best method. No judge, no jury, no matter how information is obtained, can ever get so good an idea of all the facts in the case as by having one or more able men present everything that can possibly be brought forward or said on both sides of the case. It does not always produce a fortunate result; but that is attributable to human weakness, — the weakness of human judgment,— perhaps in many cases to the impossibility of getting at the facts. I speak not as a professional man in this case, but as a layman. It is the best method we have of getting at the facts in any case, and should be so understood; and the common prejudice, perhaps more or less of a joke, in regard to a lawyer's talking on the side that he is paid for, should disappear, as it should in regard to any other professional man

who is working for a specific point, and of course has to give opinions.

Hon. Oscar S. Straus. Mr. Chairman, as you have very properly said that Professor Wayland, who has been for many years and is now the chairman of this section, is unfortunately detained from us this year on account of sickness, will you permit me to offer a resolution?

[The resolution proposed by the President is recorded under the head of "Business of 1902."]

I. TREATY-MAKING UNDER THE UNITED STATES CONSTITUTION.

BY PROFESSOR THEODORE S. WOOLSEY, M.A.

[Read Wednesday morning, April 23.]

"He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." (Art. II., Sect. 2.)

In these few and simple words the Constitution of the United States disposes of the treaty-making power. By the usage of nations this power is twofold, to frame treaties and to approve them; for, universally, the contracts entered into by diplomatic agents need the subsequent reciprocal consent of their principals. The processes corresponding to this dual power are (1) negotiation, (2) ratification, both being comprehended in the term "treaty-making."

In monarchical governments both of these processes, the framing and the ratifying, are in the same sovereign hands. But, under republican theories and constitutions, with their various safeguards of check and limitation, this is believed to be dangerous; and the power of making treaties is shared by two or more bodies. In the United States, when the present Constitution was in process of making, it was proposed to give entire control over treaty-making to the Senate. This was changed, however, partly for the reason already mentioned,— the danger of putting so great power into the hands of one body; partly, also, because, in the nature of things, foreign treaties which demand secrecy and delicacy of handling could not be successfully negotiated by a considerable number of men, however able. Hence came the provision which serves as text for my discourse. In this text are three different provisos: (1) the President is to make treaties; (2) in doing so, it shall be "by and with the advice and consent of the Senate"; (3) but two-thirds of the senators present must concur to validate the contract.

That the President, the executive head, should take the initiative in treaty-making, was necessary, because it is only through the

executive branch that foreign powers can be communicated with. Yet this right of negotiation was only a concurrent right, after all, because to be carried on "by and with the advice and consent" of the Senate. The necessity of ratification is referred to in the third phrase, and its method, by the President, with the concurrence of two-thirds of the Senate. So far, then, as the letter of the Constitution governs, treaties are negotiated by the President taking advice with the Senate, and ratified by the President, with consent of two-thirds of the Senate, the negotiation and ratification processes being shared throughout with the Senate.

Accordingly, we find that President Washington went over to the Senate for advice in his early dealings with Indian tribes and foreign nations. How clumsy this practice proved to be was soon apparent. John Quincy Adams, in his "Diary," quoted by Hon. J. W. Foster in an interesting article in the *Yale Law Journal*, on "The Treaty-making Power," relates that Crawford told him that Washington, early in his administration, went to the Senate with a project of a treaty, and listened to its discussion by the senators. "They debated it, and proposed alterations, so that, when Washington left the Senate Chamber, he said he would be damned if he ever went there again. And ever since that time treaties have been negotiated by the Executive before submitting them to the consideration of the Senate." (6 Memoirs John Quincy Adams, 427.)

In point of fact, however, this change of usage did not immediately come about, as is shown by Senator Lodge in his able paper on "The Treaty-making Powers of the Senate," in the January, 1902, *Scribner's*. For both Washington and some of his successors occasionally advised with their senators in regard to negotiations, and, particularly, explained the object of sending negotiators the ratification of whose appointment was in question. The theoretical necessity of advising with the Senate has thus always existed; but it was practically inconvenient, and under later usage, the Senate's share in the negotiation of treaties has been postponed. The President first makes treaties, and then submits them to the Senate for its opinion. This opinion may take the shape of approval, alteration, or rejection.

In a somewhat similar fashion, though for a different reason, the second stage of treaty-making, that of ratification, has also undergone practical transformation. Since the president has through a

trusted agent framed a treaty, it is almost certain that he will also ratify it, so far as he is concerned. The doubtful party in the ratification process is the Senate. So that, though technically untrue, it is practically the fact that the President frames and the Senate ratifies a treaty, there being legitimately an opportunity during ratification for the Senate to reject it or to make any changes in it which its concurrent treaty-making power under the Constitution warrants. So that ratification often means amendment. This usage of amending treaties in the Senate is warmly defended from criticism by Mr. Foster and by Senator Lodge in the articles referred to. I venture to think, however, that they have both somewhat missed the point of foreign criticism of this practice. It is not so much because changes are desired by the Senate as because these changes are inserted in the treaty text without prior reference to the other party, and the altered instrument then "advised" for ratification, which, as we have seen under our usage, practically is ratification. Thus Lord Lansdowne, quoted by Senator Lodge, complains of the amendments which completely changed the nature of the first Hay-Pauncefote canal treaty, as being "a proposal communicated to His Majesty's government by the United States government, without any previous attempt to ascertain their views, for the abrogation of the Clayton-Bulwer Treaty." Senator Lodge goes on to say that in these amendments, one of which superseded the Clayton-Bulwer Treaty in so many words, "we see the only chance the Senate had to make its advice felt in the negotiation." If this is true, it excellently illustrates how completely the "advice" of the Senate fails to be impressed upon a treaty until it is offered for ratification. But, as I understand Lord Lansdowne's complaint, it might be thus elaborated: a treaty is a contract, the stipulations upon the one side balancing those upon the other. It is to be viewed as an entire contract, so that any change in the one set of considerations justifies a change in the other set, and must therefore be considered by the negotiators *de novo* before acceptance. The Senate's usage, however, in its undoubted right to amend, which is negotiation, is faulty in that it does not return the treaty unapproved along with objections and instructions to the negotiator, for further conference to see what the other party will do. Instead of this, the Senate changes *ad libitum* in a purely *ex parte* manner, and then proceeds to ratify the whole altered treaty. It is thus not the constitutional substance, but the diplomatic form

that is criticised. This usage dates back more than a century. For, when Jay's treaty came up for ratification by the Senate in 1795, the twelfth article was amended by an additional article in such a way as to change completely its provisions respecting the West Indian trade with this country, and this has been frequently done ever since. There is a saving of time perhaps by reason of this practice. If accepted by the other party, the amended treaty, its ratification having been advised, needs no further senatorial action. On the other hand, there is a certain crudity and want of dignity, even perhaps an unfairness, in the usage. To ratify a change in treaty stipulations before the other side has seen it is to put ratification before negotiation, to put the cart before the horse. It brings into the light of publicity what should be still discreetly left to the methods of diplomacy. It seems to cast a presumption of acceptance upon the other, as yet unconsulted, party, entailing blame, if failure results. Not long since one corporation, of which I was trustee, deeded its property under conditions to another corporation. The second corporation accepted the property, assented to the conditions, made a minor alteration in them, and considered the matter closed. But of course the first corporation had to accept the alteration and to resolve to deed its property over again. No harm was done, a little trouble was made, and an unbusinesslike impression given. It is very much so with this ancient senatorial usage. Not much harm results, but the diplomatic proprieties are violated.

It will appear from the foregoing that a shifting process has taken place in our treaty-making usage, in accordance with which the Senate's "advice and consent" are not usually taken until the Executive's right of negotiation has been finished; *i.e.*, a process which in terms is concurrent, in practice is divided into two consecutive stages. What do these words "advice and consent" mean? They do not stand alone, being used also in the same paragraph of the Constitution to describe the choice of diplomatic agents, judges of the Supreme Court, "and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law." Such officers the President is to nominate, and by and with the advice and consent of the Senate to appoint. Here, too, we know that by usage, though some members of the Senate may be consulted in advance, it is only by a stretch of language that the Senate, as

a whole, can be said to express an opinion as to such appointments until they come up for ratification. Advice and consent mean here a veto power, and this only because an appointment is incapable of substitution or amendment. Von Holst, in his treatise upon the "Constitutional Law of the United States," states that, "though debates often take place over the nominations sent in by the President, yet the action of the Senate is limited to the exercise of the right of saying yea or nay" (p. 201). He then asks the further question, "whether in the clause concerning the making of treaties the same words are to be interpreted in the same manner; that is, that the Senate is also authorized only to say yea or nay when a treaty is placed before it for ratification by the President." "The actual practice," he goes on to say, "has always been for the Presidents to call for the 'advice' of the Senate, when they sought its 'consent'; that is, when they presented to it the treatise perfected up to the point of its assent. And this was never held to be unconstitutional. But it has also happened that a President before negotiating a treaty has asked the Senate for advice, and his right to do so has never been disputed." The right of the Senate to amend treaties as well as to veto them, even its right to suggest negotiation, Von Holst also admits, though upon this suggestion the President cannot be forced to act.

In this general view of Von Holst's other writers upon the Constitution of the United States on the whole concur, but for our purpose it is not necessary to quote further. "Advice and consent" mean more than mere veto power. The Senate shares with the President in the negotiation of treaties. By usage this right has come to be exercised at the same time with ratification, so as to appear merged in it. But this usage is the result of mere convenience, and may well be altered at any time.

There are signs of a disposition on the part of the Senate to revert to the earlier practice, and insist that advice shall be taken by the President before the negotiation is completed.

To those who do not bear in mind the Senate's concurrent right in the treaty-making power, this looks like an encroachment upon the Executive. It may, indeed, be such. That will depend upon the real motive which has governed the Senate. It is now and always has been fit and customary that a President whose treaty is to run the gauntlet of the Senate later, shall feel its pulse by consultation with a few of its members, and particularly with the

chairman of the Committee on Foreign Affairs, a very different thing of course from getting the "advice and consent" of the entire body. But if that committee or, still more, the Senate at large, piqued at what it chooses to think a want of consideration on the President's part, refuses to take up a treaty, emasculates it, or vetoes it, for this reason alone, and not from its inherent defects, that is truly an encroachment upon the Executive. So, too, mere party hostility displayed in the same way is to be deplored. It is betraying the welfare of the country, in order to gratify senatorial pride or political animosity. And worst of all is that opposition born of disappointment in regard to places and other such favors. Into the real motives of men it is impossible to penetrate. Senatorial reluctance to ratify treaties is emphasized here as a preface to a broader inquiry. Would it not be wise for our Presidents to encourage a return to the earlier usage, simply in order to render their treaty-making more efficient? No one who studies the working of our government can fail to be struck by the great difficulties in the way of successful treaty-making. From factious opposition, from quarrels within and from hostility without his party, a President's treaty may fail of getting fair consideration. The drastic provision which requires the approval of two-thirds of the senators present is itself an obstacle. Jealousy of treaty-made legislation may be another obstacle.

It is quite possible that these various hindrances to ease of treaty-making are worth while. They are part of the price we have to pay for our stability under the Constitution. The Senate preserves a certain policy and certain characteristics more continuously than the Executive does. It is more responsible for legislation than the President.

The reciprocity agreements now before the Senate for action will illustrate something of this.

Under the Dingley Act, Congress put a certain degree of reciprocal tariff concession to other states into the President's hands, subject only to the advice and consent of the Senate. The Senate, therefore, is alone in position to make sure that reciprocity does not endanger the principle of tariff protection. How far do these reciprocity treaties encroach upon protection? Many Republican leaders have advocated the principle of them; and, as we have seen, the Dingley tariff was constructed with reference to them. Yet experience has shown that nothing counts except the present sense

of economic policy which possesses the Senate. Reciprocity, after all, is the sacrifice of one set of interests to benefit another set of interests. Whose ox shall be gored? If this interesting question is to be fought out after the treaty is framed, it is likely to go hard with the treaty. But, if in executive session —for this is executive business — the Senate could agree upon a maximum of tariff concession, consistency and dignity would tend to force it to ratify its own conclusions, so that the President in his negotiations could count with greater certainty upon its support or would be precluded from negotiating at all. In either case he would be spared the humiliation and the exasperation of barren compacts.

It is a question if the present usage is not intolerable both to our Presidents and to those with whom they try to negotiate treaties. If the return to the earlier usage here suggested should take place, there might be fewer treaties negotiated, but a larger percentage ratified. That it is not impracticable would appear from the success of the second Hay-Pauncefote canal treaty, in behalf and in advance of which Mr. McKinley took counsel with the Senate and met its objections.

There is another inquiry having to do with the treaty-making power in which executive and legislative departments have different views. It often happens that a treaty calls for the payment of money, or needs other special legislation, to be operative, which calls for action by the House of Representatives. A treaty negotiated and duly ratified under the Constitution becomes "the supreme law of the land" (Art. VI.). The question is, then, whether such action is obligatory upon the House, or whether the House may exercise an option, and thus secure for itself a kind of secondary right of ratification. This question has often been raised, but never brought to an issue, because the House has never gone the length of refusing the legislation or grant which the treaty called for, even when asserting its right to do so. We can, therefore, merely refer to some illustrations of the difficulty, and cite the opinions of the better class of publicists who have discussed it, showing, however, the belief of the Executive in regard to the situation.

The question first came up in 1796 in connection with Jay's treaty, negotiated in 1794. A simple resolution calling upon the President for papers brought on a month's debate, which turned largely upon the constitutional powers of the House, but was com-

plicated by the opposition to Jay's treaty shown by French sympathizers. The resolution passed by a vote of 63 to 37, and brought a refusal from President Washington, which referred to the scope of the debate and to the claims of the House. "I have ever entertained but one opinion," he replied, . . . "that the power of making treaties is exclusively vested in the President by and with the advice and consent of the Senate, provided two-thirds of the senators present concur, and that every treaty so made and promulgated thenceforward becomes the law of the land. It is thus that the treaty-making power has been understood by foreign nations, and in all the treaties made with them we have declared and they have believed that, when ratified by the President with the advice and consent of the Senate, they become obligatory. . . . As therefore it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty, . . . and as it is essential to the due administration of the government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of the case, forbid a compliance with your request" (Annals of Cong., 4th Cong., 1st Sess., p. 761). A month later the House voted to carry the treaty into effect by 51 to 48, having missed declaring the treaty objectionable instead by the casting vote of the Speaker (Annals of Cong., 4th Cong., 1st Sess., p. 1291). It did, however, previously resolve that, "when a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution as to such stipulations on a law or laws to be passed by Congress."

This constitutional question has been brought out in its simplest form by those treaties for the annexation of territory which have needed a money payment in return,— the Louisiana purchase, the Gadsden purchase, the Alaska purchase.

In the first of these, Congress was only too glad to accept so happy a solution of a long-standing evil. On the other hand, as is well known, Jefferson was none too confident of the right of annexation under the Constitution, and disposed to placate Congress by all possible consideration. Hence, in his third annual message (Oct. 17, 1803), he refers to the desired House action thus: when the instruments of cession "shall have received the

constitutional action of the Senate, they will without delay be communicated to the Representatives also for the exercise of their functions as to those conditions which are within the powers vested by the Constitution in Congress." Nevertheless, four days after, in a communication to both Houses, having recited the fact of ratification, he proceeded as follows: "You will observe that some important conditions cannot be carried into execution but with the aid of the Legislature, and that time presses a decision on them without delay." So that he would appear to have consulted the House in advance of ratification, but yet to have presumed upon their appropriation of the Louisiana purchase money in compliance with the treaty (Richardson's Messages, i. 358 and 363).

The Gadsden purchase or cession was concluded in December, 1853. In its customary way the Senate had amended it, and its changes had been accepted by the Mexican government. Accordingly, upon June 4, 1854, President Pierce asked the House for the money. "There is a provision in the treaty for the payment by the United States to Mexico of the sum of seven million dollars on the exchange of ratifications and the further sum of three millions when the boundaries of the ceded territory shall be settled. To be enabled to comply with the stipulation according to the terms of the treaty relative to the payments therein mentioned, it will be necessary that Congress should make an appropriation of seven millions for that purpose before the 30th instant, and also the further sum of three million dollars when the boundaries shall be established. I, therefore, respectfully request that these sums may be put at the disposal of the Executive." It is pretty clear that Pierce was of Washington's opinion as to the duty of the House in the premises; and the House likewise squirmed, and tried to assert itself. It called for the papers in the case. It objected to the Washington precedent. It debated pro and con the Jefferson precedent. Some one moved to amend the bill by reducing the appropriation by one dollar. Mr. Benton opposed the President's request vigorously, saying: "It did nothing but demand the check of the House for ten millions of dollars, and that at brief notice and without days of grace. Give me the money by to-morrow. That is like stand and deliver." "He considered the President, in negotiating this treaty, had invaded the privileges of this House." But, as before, when it came to a vote, the appropriation was granted by 103 to 62 (*Congressional Globe*, xxviii, ii., 1520, *seq.*).

The debate over the appropriation for the Alaska purchase took a very similar turn. Papers were called for and furnished. A resolution that the House reserve to itself the right to judge of the propriety of such cessions, quite apart from President and Senate, was made, but objected to; and the purchase money was voted. The opposition was comparatively languid, being disarmed by the fact that the treaty of 1867 provided for immediate possession of the ceded territory, and that this had already been taken. But this very fact was an invasion of the rights of the House, and in a variety of ineffectual motions it tried to impress the Senate with this view.

When a treaty involves questions of tariff, the House in like manner disputes the right of President and Senate to thus indirectly take tariff legislation out of its hand. In a few cases our treaties have specified that action of the House shall be taken before they are to go into effect: for instance, the Reciprocity Treaty of 1854 with Great Britain, Article V., and the Reciprocity Treaty with the Hawaiian Islands in 1875, Article V.; and only a few weeks ago the Senate Committee on Foreign Relations adopted a recommendation that each of the present reciprocity treaties be amended so as to provide that it shall take effect when approved by Congress, "on the ground that the Dingley Bill required for these reciprocity conventions the consent of the entire Congress." But, in the main, the Senate has held to the finality of its action as expressed in a treaty affecting the tariff, while the House has opposed this view. This was stated so lately as 1885, in a report of the House Committee on the Judiciary, "that the President by and with the advice and consent of the Senate cannot negotiate treaties with foreign governments by which the duties levied by Congress can be changed or abrogated, and such treaties to be operative as laws must have the sanction of Congress." Since the tariff has for so long been a political dividing line, however, the House in this matter is necessarily influenced by that quite as much as by the constitutional argument. In the treaty for the purchase of the Danish West India Islands, and in certain of the reciprocity treaties now before the Senate, both these duties of voting money and of passing laws to make a treaty operative are likely once more to be laid upon the House. And, as before, the House will probably protest, resist, delay, and comply.

Once the same question came up before the legislature of an-

other power, France, the payment of twenty-five million francs being due to the United States under the terms of the treaty of 1831, for French spoliations. When this sum was not forthcoming, owing to the refusal of the appropriation, our government took strong ground as to the obligation created by the treaty. President Jackson in his message, Dec. 7, 1834, recommended reprisals and threatened war. Greatly offended at such language, the French government demanded explanation and apology as a condition of payment. By 1836 Jackson had calmed down so far as to be satisfied with the mere exclusion of French products, and the money was finally paid. Thus consistent has the Executive been, whether our own or a foreign assembly proved recalcitrant, in this matter of appropriating and paying money under a treaty.

I add here two opinions upon this topic from writers on Constitutional Law,— Judge Cooley and Professor Von Holst. The former (Principles, etc., p. 118) says, "If by a treaty a sum of money is to be paid to a foreign nation, it becomes the duty of Congress to make the necessary appropriation; but, in the nature of things, this is a duty the performance of which cannot be coerced"; and, again (p. 175), "The full treaty-making power is in the President and Senate; but the House of Representatives has a restraining power upon it, in that it may at its discretion at any time refuse to give assent to legislation necessary to give a treaty effect." He goes on to say that many treaties need no such legislation, but that, in case of a bad treaty, this power to nullify it, as an extreme measure, might be justified.

Von Holst states the problem without trying to solve it. "The House, therefore, is always able in such a case" (of a treaty needing legislation for its execution) "to annul a treaty in fact, although it has no part in the power of making a treaty. Whether it has the right to do so has repeatedly given rise to very incisive and exciting debates. These debates have not led, however, to any certain decision of the question. The House has not withheld its co-operation, but it has also not dropped its claim of the right to act entirely in accordance with its own judgment." . . .

Equally inconclusive is the judgment of the Supreme Court of the United States in the case of *Foster & Elam* v. *Neilson* (2 Peters, 253–317), relating to the ownership of land in West Florida, under a grant of 1804, when the sovereignty of that region was in dispute, and confirmed by the treaty with Spain of

1819, but not by act of Congress. Did the treaty override the power of Congress to adjust and confirm titles of land? Not so far as this court is concerned, says the judgment. "Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But, when the terms of the stipulation import a contract, where either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the court."

In *Turner* v. *American Baptist Church* (5 McLean's C. C. Rep. 347) a United States court has gone farther, and adopted the view of the House, saying that the representatives, when a treaty needs a money appropriation for its execution, "exercise their own judgment in granting or withholding the money. They act upon their own responsibility, and not upon the responsibility of the treaty-making power. It cannot bind or control the legislative action in this respect; and every foreign government may be presumed to know that, so far as the treaty stipulates to pay money, the legislative sanction is required." To which last one naturally answers that, if the President and Senate deny the necessity of this legislative sanction, the poor foreign negotiator may be pardoned for being uncertain of it. And we close the exposition of this question as we began it, in frank uncertainty. This much is probably true, however, as our attitude towards France in 1831 shows: that international law can take no account of internal constitutional questions like this. A treaty ratified is a contract assumed; and failure to execute it implies its breach and a penalty, whatever the cause. Just so the national government has assumed the responsibility and paid the damages for negligence or failure of justice on the part of individual States, in the lynching of Italians at New Orleans and the massacre of Chinese miners in Wyoming.

I began with a text: let me close with a moral.

By force of events our country has been drawn out of its position of comfortable political isolation, and bids fair to play a larger part than heretofore in the world's politics. This means that the subjects of our diplomatic negotiation will be more important, its processes more complicated. To play such a part successfully, it is

essential that the treaty-making power shall be endowed with all possible flexibility, freedom from friction, dignity and certainty.

But, as has been pointed out, there are in our present usage certain difficulties which stand in the way.

There is friction between the President and Senate in the negotiation of treaties.

There is friction between both of these and the House in the execution of treaties.

There is friction with foreign governments through inability to carry through the ratification of treaties after agreement.

And, lastly, there is the ancient but exasperating usage of the Senate, not as to the fact, but as to the manner of amending treaties.

This last-mentioned blot upon the dignity of the Senate can be and should be wiped out by referring desired amendments to the Executive, to be the subject of further negotiation.

The difficulties between President and Senate might be removed if the former would revert to the early usage, take the Senate earlier and more fully into his confidence, and secure its co-operation before negotiating.

And, finally, the House should yield more fully to the principle that treaty-making belongs to others, that the national honor demands the faithful execution of a treaty, and that all moneys carried by one should be voted unreservedly.

It may be conceded, however, that in treaties involving tariff legislation the House must be a free agent; for otherwise the entire tariff policy might be upset by treaty. Upon compacts of this character, therefore, the House should have its right of veto, or, if feasible, be consulted in advance.

Given greater ease and certainty in treaty-making, and with that same simplicity and directness of purpose which have long marked it, American diplomacy may do manful service in keeping the peace of the world and advancing its civilization.

2. MERITS AND DEFECTS OF THE BANKRUPT LAW.

BY GEORGE C. HOLT, ESQ., OF THE NEW YORK BAR.

[Read Wednesday morning, April 23.]

The existing bankrupt act has now been in operation more than three years. I purpose to state what seem to me the merits and defects of the present law, as shown by its actual administration.

Any national bankruptcy system must be obviously superior in certain respects to any method of administering insolvent estates by State insolvent laws. A bankrupt act applies equally to all the creditors of the bankrupt throughout the country. A State insolvent law can only affect those creditors who are citizens of the same State. The national government by a bankrupt act can authorize a bankrupt debtor to be discharged from all his debts. No State law can affect debts held by citizens of another State. A State insolvent law, however, if wisely framed, may do much towards providing for the equitable distribution of an insolvent's estate. A few of the States have adopted good insolvent laws. Some States have substantially no law on the subject. Many of the States have laws regulating the administration of general assignments for the benefit of creditors, but leaving such assignments in their origin to be purely voluntary and governed by the principles which regulate private contracts. In most of the States which, before the bankrupt act, had no complete insolvency system, preferences were allowed, either with or without restriction; and, practically, it was usually possible for some creditors to obtain advantages over others. In New York, for instance, before the bankrupt act there was no general insolvent law. There was an act regulating the method of procedure in the settlement of estates by assignees. It may be instructive to state briefly the practical operation of this system in New York.

The situation of every man in New York engaged in business was this: Usually, a merchant bought goods or a manufacturer bought raw material on credit. Such a person was liable at any time, if any rumor of his insolvency arose, or even without any

such rumor, to have his entire stock of goods seized and carted away under attachments or replevins. The usual ground for an attachment or replevin was that the purchaser was insolvent or that fraudulent representations were made when the goods were purchased. When replevins were brought, the goods were identified; and, if the entire manufactured product could not be identified, some of the material that went into it, as the buttons on a coat, was identified and the entire article taken. As soon as the news got out that such a suit was brought, all the other creditors began what the old law books felicitously describe as a race of diligence, so that frequently, in the course of a morning, honest merchants, who were apparently prosperous and successful, and who did not suppose themselves to be in any danger of business disaster, found their property removed, their business destroyed, and their credit irretrievably ruined. Frequently, the victim had theoretically a perfect cause of action against the persons who had instituted these suits; but, usually, the disaster was too complete to be repaired. The only safety from such attacks was an assignment for the benefit of creditors, made the moment that there were any signs of danger. It therefore happened that a great many assignments which, under any decent system, would have been unnecessary, were hastily made, with ruinous results. But in New York a merchant had no assurance that by an assignment his property would be applied ratably and equally to the payment of his debts. Strange rules of law relating to fraud in assignments were established by judicial decisions. The courts in New York substantially established the principle in the case of insolvent partnerships that it was legal fraud for the partners to apply any of the assets of the partnership to the payment of the individual debts of the partners. This doctrine was based, of course, on the just rule universally applied in courts of equity and bankruptcy that in the administration of the estates of insolvent partnerships the firm assets should be applied in the first instance to the payment of firm debts, and individual assets in the first instance to the payment of individual debts; and, although fraud is a harsh term to apply to such a payment which is usually made innocently, yet the principle was quite correct that such payments by an insolvent firm should be disallowed. But the New York courts, having held that a payment of a partner's individual debt out of firm assets, before the assignment, while the firm was insolvent, was a fraud, went on to hold that it was a fraud

which vitiated the assignment. If it had been held that the payment itself was vitiated, and that the assignee could recover the amount from the person to whom it had been paid, the decisions would have been unobjectionable. But the practical effect of the doctrine as actually established was to make almost every honest partnership which failed in New York the prey of attorneys engaged in the business of setting aside assignments. As soon as an assignment was made by such a firm, the lawyers engaged in the business found some creditor, sued, obtained a judgment, examined the assignors in supplementary proceedings, and had their books examined by an expert. If they discovered, as they usually did, that any member of the firm in the week or two before the firm failed had drawn out some money with which to pay his household expenses, then a judgment creditor's bill was filed to set aside the entire assignment for fraud. The result was a decree setting it aside, and giving the judgment creditor who had filed the bill the first lien on the assets.

Usually, different judgment creditors came in and filed a number of such bills, so that the first judgment creditor was paid in full, then the second, and so on until the estate was exhausted, and the remaining creditors received absolutely nothing. The result was the formal establishment of a legal system by which the estates of insolvents were distributed in substantially the same manner in which a pack of wolves tears its prey in pieces. The system inflicted grave injustice upon honest merchants, and afforded fine opportunities to knaves to cheat their creditors. The attorneys who had acquired a reputation for skill in the business of appropriating the estates of honest merchants afforded skilful and experienced assistance to fraudulent insolvents. The whole system from top to bottom was one of the most disgraceful methods of the administration of insolvent estates that ever existed in a mercantile community. The bankrupt law has put an end to all that iniquity; and, if it had done nothing else, it would be entitled for that reason to grateful consideration.

Coming now to a consideration of the specific merits of the present bankrupt act, I will first refer to the provisions for the thorough and immediate investigation of the bankrupt's affairs. It is essential to the proper protection of the rights of creditors that a bankrupt and his books of account should be thoroughly examined immediately after the adjudication. There are also

weighty public reasons why a thorough investigation of a bankrupt's affairs should be had, although the carrying on of such an investigation may safely be left to the creditors particularly interested. But it is a striking thing how practically important it is that a specific time and place for such examination be fixed by law, and be not left to the initiative of any individual creditor. The New York act regulating general assignments for the benefit of creditors provides that any creditor can, on petition to the county judge, obtain an examination of witnesses and the production of books and papers in relation to any assigned estate; but any such application was rarely made. An assignee was not obliged to call the creditors together for any purpose. He had no stated time in which to wind up the estate. The only practical right of any creditor was to object to his account upon his final accounting, which frequently took place years after the assignment. Such a system practically leaves everything to a friendly assignee. Under the present bankrupt act, immediately after the adjudication a first meeting of creditors is held. Notice is sent to every creditor, and the first business of the meeting is the examination of the bankrupt by any one who wishes to do so. The result is that almost all bankrupts who have any assets, and a good many who have none, are thoroughly examined under oath, with their books and accounts at hand, immediately after the bankruptcy, and are required to explain, while the failure is still recent, all the facts and circumstances connected with it and the real causes of it.

Another great merit of the present bankrupt act is that the creditors elect the trustee. When an assignment is made for the benefit of creditors, the assignee is of course selected by the assignor. The result is that the assignee is always a friend of the assignor. If the insolvency is a fraudulent insolvency, this power of selecting a friend of the assignor to administer the estate is a serious obstacle to the creditors in any efforts to obtain justice. That obstacle is entirely removed by the provision in the bankrupt act that the trustee shall be elected by the creditors, or, if they neglect to make an election, shall be appointed by the referee.

Another admirable provision of the present bankrupt act is the requirement that the trustee shall make frequent reports. He is required by the act to make a report to the court of the condition

of the estate and the amount of money on hand within the first month of his appointment and every two months thereafter. The information contained in these reports is of value, but the essential advantage of the system is that it spurs trustees to act and collect the assets and to distribute them. The necessity of making a report every two months is an admirable incentive to them to proceed with speed in winding up the estate. Most trustees dislike to make a written report which shows that they have done substantially nothing for two months, and yet two months to a dilatory trustee is a period which passes quickly. The delay of trustees in settling estates is always an evil in all systems of bankruptcy or insolvency, and I think the requirement of frequent reports in the present act an extremely valuable aid in preventing delay in administration.

Another good feature of the present act is the requirement that actual notice of all sales of property be sent to each creditor. Under the previous bankrupt acts the ordinary legal notice of sales was sufficient. An advertisement was published in a newspaper, and a written notice posted in some public place. Under the present act actual notice is sent to each creditor by mail. If the sale is at auction, they are given ten days' notice of the time and place of sale. If an offer is received by the trustee for the purchase of property at private sale, a meeting of creditors is held on ten days' notice to consider the acceptance of the offer. The result is that every creditor has notice of every sale and an opportunity to bid himself. Auction sales, therefore, are generally well attended and good prices obtained. Offers to purchase at private sale often bring about larger offers at a meeting of creditors to consider it. It frequently happens that at such a meeting a sort of creditors' auction takes place, with the result of a large increase on the price originally offered at private sale. And this system of notifying creditors prevents complaints against the trustees of making sales at inadequate prices. If creditors having actual notice of sales do not attend, they cannot complain if the goods are sold for the highest price which is offered.

I think, too, that the present bankrupt system is less dilatory than its predecessors. The bankrupt is entitled to apply for his discharge within thirty days after his adjudication, provided his examination is closed. This leads the bankrupt to urge the speedy close of his examination, and often enables him to obtain his dis-

charge, if he is entitled to it, long before his estate is distributed. The act requires that dividends be declared within thirty days after the adjudication, if the money applicable thereto equals five per cent. of the allowed claims, and that subsequent dividends be declared as often as the amount shall equal ten per cent. The act also provides that the trustee's and the referee's commissions shall not be payable until the money is distributed in respect to which the commissions are computed. The trustee, therefore, has an interest in distributing any money on hand at once, and the referee has an interest in compelling the trustee to do so. I think the practical operation of this act in respect to the speedy settlement of estates and distribution of dividends has been a good deal more satisfactory than under the old bankrupt act of 1867; and it is certainly vastly superior to the systems which existed in many States, before the act was passed, of administering insolvent estates by general assignments for the benefit of creditors, the delays of which were frequently gross and scandalous.

I think, too, that the present act deserves credit as an inexpensive act. It is gravely faulty in various respects in not authorizing the payment of adequate amounts for services rendered; but the total cost of a proceeding in bankruptcy under this act is very reasonable, and is much less than it was under the former bankrupt act.

Having thus referred to some of the merits of the present bankrupt law, I will call attention to what seem to me to be its most serious defects.

In the first place, I see no reason why any class of persons in the community should be excluded from the jurisdiction of a bankrupt act. It is a matter not only of public convenience, but of justice, that all insolvent estates should be administered under the same system. The present act does not permit any corporation to voluntarily become bankrupt, or any corporation, except those engaged in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts amounting to $1,000 or over, to be adjudged an involuntary bankrupt. There is no just reason for this exclusion. A large part of the business of the country is now done by corporations. There is no reason why any business corporation which is insolvent should not be entitled to the privilege of becoming a bankrupt on its own petition or should not be liable to be adjudged a bankrupt on the petition of its creditors.

Under the present system insolvent corporations are left to be wound up under State statutes having no uniformity of procedure and no extra territorial jurisdiction. The practical result is that the administration and settlement of the affairs of insolvent corporations is complicated, expensive, and inefficient. They ought to be made liable to the provisions of the bankrupt act to the same extent as natural persons.

I think it is a defect in the present act that the involuntary proceedings are made too complicated and troublesome. Actual insolvency should be the basis of bankruptcy. When any man is insolvent, it should be in the power of any creditor to stop his going on in business, and to compel the ratable application of his assets to the payment of his debts. Such a power will not usually be rashly exercised. Every creditor has an interest in having his debt paid in full, and that fact is one of the most weighty reasons for a bankrupt law. If there is no such law, each creditor has a motive to get a first lien by judgment; but, if a bankrupt act exists so that no preference can be obtained, and each creditor in case of bankruptcy is paid ratably, each creditor has an individual interest in not putting a debtor into bankruptcy, unless he is hopelessly insolvent and his condition is constantly growing worse. But it is a matter of public interest that hopelessly insolvent merchants and traders should not have the power to go on increasing their liabilities, and becoming more deeply involved in a failing business. The present act permits an involuntary proceeding to be brought by creditors against a person who is insolvent, and who has committed an act of bankruptcy, within four months after the commission of the act. The acts of bankruptcy, as defined in the statute, are: the conveyance or concealment of property with intent to defraud creditors; the transfer of property, while insolvent, with intent to prefer creditors; permitting a creditor to obtain a preference through legal proceedings and not having, at least five days before a sale or final disposition of any property affected, vacated the preference; making a general assignment for the benefit of creditors; or having admitted in writing a willingness to be adjudged a bankrupt. It will be observed that insolvency alone is not a ground of involuntary bankruptcy. The grounds of proceeding permitted in involuntary bankruptcy are based on the idea that it should not be in the power of a creditor to put an insolvent debtor involuntarily into

bankruptcy unless the debtor has committed or is about to commit either a fraud or a preference, or himself consents to the proceeding; for a man who makes a general assignment, inasmuch as that is an act of bankruptcy, in effect thereby consents to be adjudicated a bankrupt in an involuntary proceeding. An assignment is sometimes made as a preliminary step in bankruptcy when attachments or liens are anticipated, and counsel have not sufficient time to prepare schedules in voluntary bankruptcy. In such cases a general assignment is immediately followed by a petition in involuntary bankruptcy, based on the fact of the assignment. The provision in the act that a person who has suffered or permitted, while insolvent, any creditor to obtain a preference by legal proceedings, and not having, at least five days before a sale or final disposition of any property affected by such preference, vacated or discharged such preference, enables involuntary proceedings to be taken to prevent a creditor from obtaining a preference. But the act contains no practical provision for demonstrating a debtor's insolvency, and authorizing involuntary proceedings for that reason. The act of 1867 made the non-payment of commercial paper within fourteen days after maturity an act of bankruptcy. That provision worked well in most cases, although, of course, there might be instances in which commercial paper was refused payment for a just reason. I think it would be a good proof of insolvency if a man permitted a judgment recovered against him to remain unsatisfied or unsecured on appeal for a period, say, of ten days after its rendition. A man should not be permitted to proceed in bankruptcy against another as his creditor if there is any doubt that he is a creditor, and the recovery of a judgment is the best practical test of the validity of the claim. Any creditor ought to have the right to put his debtor into bankruptcy, if he is in fact insolvent; and I think that, if a man permits a judgment to remain unpaid and unsecured on appeal a certain reasonable time, that fact might well constitute an act of bankruptcy which would authorize any creditor to file a petition against him.

I think, too, that the requirement that three creditors should join in an involuntary petition is unnecessarily troublesome. If a debtor should be put into bankruptcy, one creditor ought to have as much right to ask the court to do it as three.

Another defect in the bankrupt act is that the United States

courts have no jurisdiction over suits by or against trustees, except the jurisdiction of the Circuit Courts in suits between citizens of different States. The provisions of the act were obscure upon that point, and the United States Supreme Court decided that the jurisdiction of the State courts was substantially exclusive. There are weighty reasons why the United States courts should have jurisdiction of such suits, and there certainly ought to be no reasonable objection to the jurisdiction of the State courts and the United States courts being made concurrent in such cases. In some of the States, notably at present in New York, the calendars for jury cases in the State courts are badly congested, so that, if a trustee in bankruptcy is obliged to bring any actions or be involved in any litigation, several years elapse before the case can be tried; and in the mean time the settlement of the estate is delayed.

Another defect of the present act as construed by the Supreme Court is the prohibition of the allowance of the proof of any claim on which the holder has received a payment on account during insolvency. The Supreme Court has decided that an ordinary payment on account, made by an insolvent person before bankruptcy to a creditor who received it in entire ignorance of the insolvency, constitutes a preference, if the creditor thereby obtains more than other creditors of the same class would obtain, and that such creditor must pay to the trustee the amount so received in order to prove his debt and receive any dividend.

Both these decisions of the Supreme Court, on the questions of the jurisdiction of the United States courts and of preferences, are good illustrations of the tendency of Appellate Courts to give little weight in coming to their conclusions to the practical consequences which will result from them. In both of these cases the language of the act was obscure. The act itself is a piece of patchwork made up from several different drafts of proposed bankrupt acts. In each case eminent judges had rendered decisions on both sides of the question. In each case the Supreme Court was entirely at liberty to adopt either construction. In one of them the decision was rendered by the usual majority, in recent times, of five to four. The construction adopted by the court in each case was logically acute and practically objectionable. The fact that the United States courts are closed to trustees in litigations relating to bankrupt estates seriously impedes the settlement of such estates; and the controversies which now occur in reference to payments on account,

alleged to have constituted preferences, occupy a large portion of the time of every referee in bankruptcy. It is a very objectionable thing for the law under any circumstances to provide that a payment of money, perfectly valid and legal when received, may, because of something subsequently occurring, become invalid. Every man who receives money as his own in most cases employs it in some way, or invests it, or parts with it; and to be called on suddenly months afterward to return it is not only extremely inconvenient and annoying, but essentially unjust. The present act should certainly be amended by providing that no payment on account should constitute a preference unless the person who received it had reasonable cause to believe that the party paying it was insolvent and that he intended it to be a preference.

Another defect in the act is the ease with which discharges are obtained. The theory of the present act is, in substance, that any man is entitled to a discharge who turns over all the property which he has when he goes into bankruptcy, tells the truth about his estate in his schedules and upon his examination, and does not conceal or destroy his books of account. He may have been guilty of the most outrageous frauds in the past conduct of his business. He may have wasted large sums in gambling. He may have obtained an extensive credit on wilfully false statements, either made directly to his creditors or to mercantile agencies. None of these facts is a ground for opposing a discharge. Surely, a man who has been guilty of such acts should not be freed from his debts and allowed to return to defraud the community again. Sir Fitz James Stephen, in his History of the Criminal Law, while discussing the justice of the death penalty in certain classes of cases, expresses the opinion that that class of men who live by fraud, and who have shown by a long and unvaried business career that they are absolute and inveterate knaves and swindlers, constitute a class of criminals who more justly deserve to be punished with death than many murderers; and, certainly, such men ought not to be discharged from debts created by such frauds, and sent out to prey again upon the community.

I think, too, that a man who has made a general assignment for the benefit of creditors, and has had his estate distributed by the assignee, should not be permitted to afterward go into bankruptcy and obtain a discharge. No man should be discharged from his debts until he has in good faith applied what assets he has to their

payment, and no court should be obliged to grant a discharge which has not had an opportunity to investigate the affairs of the bankrupt and determine whether in truth his assets have been honestly turned over to his creditors. No court should be required to assume the responsibility of discharging a man from his debts which has had no opportunity to see that the assets which he had have been applied toward their payment.

One of the worst defects of the present bankrupt act, in my opinion, is the fee system embodied in it. All the officers, referees, trustees, receivers, appraisers, are paid by fees. A bankrupt who will make an affidavit that he is a pauper can file a petition without depositing any fees. Other bankrupts deposit $25 with the clerk at the time the proceeding is begun. Of this amount $10 is paid to the clerk of the court, $10 to the referee, and $5 to the trustee, if appointed. If there are assets, the trustee and referee are also paid commissions out of the assets. One of the Supreme Court rules in bankruptcy authorizes the referee to require an indemnity for expenses, and in different districts different rules have been made establishing certain fees which are required to be paid to referees as compensation for the use of office and necessary clerical services and disbursements. For instance, in the Southern District of New York, by rules promulgated by the judge, referees are allowed to charge $2.50 for each adjournment of a hearing, $3 a day for hearings on objections to discharge or other matters sent to them as special commissioners. These amounts have to be paid by the parties litigating. A fee of $1 upon filing a claim is required to be paid by each creditor, such fee being returnable out of assets, if there are any, at the first dividend. The act provides that the referee, upon the application of a trustee, may authorize the employment of stenographers at the expense of the estates, at a compensation not to exceed 10 cents per folio for reporting and transcribing the proceedings. This celebrated provision enables the estate to be charged 10 cents a folio toward any stenographer's bill; but, as no stenographer competent to take the testimony of witnesses can or ought to be employed for 10 cents a folio in any part of the country with which I am acquainted, it follows that the balance of the bill must be paid by somebody. The questions who are to pay these stenographers' fees and the various commissioners' and adjournment and other fees give rise to ever-recurring controversies of the most contemptible, trivial,

and humiliating character, to be decided by the referee. These charges, while trivial in each separate instance, are often, in the aggregate, large enough to be a serious hardship to an individual creditor. The whole fee system ought to be abolished. Justice ought to be free to all. Particularly should it be free in such a proceeding as a bankruptcy. It is not like an action at law between two litigants, each wholly interested in the result. All the creditors of a bankrupt and the mercantile community generally have an interest in having the affairs of every bankrupt thoroughly investigated. Such an investigation usually can only be successfully accomplished by a competent lawyer's cross-examination of the bankrupt and of all other necessary witnesses, and a competent accountant's examination of the bankrupt's books and accounts. Such work should be at the expense of the estate, if there is an estate. There is no justice in making any particular creditor or class of creditors pay it, while other creditors, equally interested, sit by and share the benefit of their work. Of course, when there are no assets, such expense cannot be paid out of the estate; but there are many instances in which, when the bankrupt claims that there are no assets, there should be a thorough investigation. It is particularly important that, if the bankrupt has in fact assets, and is endeavoring to conceal them, the fraud should be dragged to light, and the assets uncovered and applied to the payment of the bankrupt's debts. The administration of a bankrupt act, therefore, peculiarly ought to be without expense to the creditors or litigating parties. The office of referee should be a salaried office. The government should furnish the referees with public court-rooms, with an adequate force of salaried stenographers and clerks, and with all necessary blanks, stationery, and appliances, the entire expense of which should be paid out of the treasury as a part of the judicial establishment. It is impossible to exaggerate the importance of having the examination of witnesses, under oath, done in a court-room open to the public, and where, to a proper extent, order and dignity may be maintained. If the present theory of the law is to be carried out, that the bankrupt and his estate should pay the expenses of the proceeding, and that the bankrupt should make a deposit sufficient to pay the expense, let him be required to make a larger deposit at the outset. There is no sense in allowing a pauper to go through bankruptcy at all. If a man cannot raise $25, how can he start in business if

his debts are discharged? There is no reason why any man who desires to obtain the benefit of the bankrupt act should not deposit at the outset $75 or $100; and, if this amount were deposited and turned into the treasury, it would probably substantially defray the expenses of the administration of the act. Whether it did or not is of no consequence. What is of consequence is that the judicial system of the United States be justly administered, and that the narrowness with which a majority of Congress has steadily resisted every attempt to pay adequate salaries to judges and judicial officers should be succeeded by a spirit of justice. Even if the fee system is to be maintained as at present, the standard of fees fixed by the present bill is too small. There is much difficulty in securing satisfactory trustees to administer bankrupt estates. The pay of referees is entirely inadequate for the work done. The nature of the work is to many men interesting and agreeable; and, therefore, the office is retained in many cases by men who would not continue to hold it if they had regard simply to the fees received. But the fact that men can be found to do the work is no reason why they should be insufficiently paid.

All of these defects in the bankrupt act could be easily corrected by an amendatory bill, and most of them are provided for by the bill which has been introduced by Mr. Ray, a member of the House of Representatives. The main provisions of that bill have received the approval of the Association of Referees in Bankruptcy and of large numbers of commercial bodies, and, so far as I know, have not met with opposition from any source. It ought to be passed without further delay.

The general rules in bankruptcy, too, should be amended. The practical working of the act has shown them to be defective in various respects which could be very easily corrected by the Supreme Court. If the Supreme Court has not time to attend to the matter, it would be very easy for it to ask for suggestions from some of the judges or referees or counsel familiar with the operation of the act. One of the commonest and most annoying defects in the rules is the requirement, in the form of the order for notice of the bankrupt's application for discharge, that the clerk shall send by mail to all known creditors copies of said petition and of the order. The notice for the hearing on the application for discharge, which is printed in the newspaper, is short, clear, and simple; and a copy of that notice ought to be mailed to each cred-

itor. Instead of that being done, in the case of every application for discharge, a long copy of the bankrupt's petition for discharge, and the verification of it and of the order entered upon it, is mailed to each creditor. One of the rules in regard to the requirements of a proof of claim also differs from the form prescribed to be used, and creditors who follow the form are constantly tripped up by some of the very acute young practitioners in bankruptcy because the rule is not complied with. There are various other provisions of the rules which might desirably be corrected, and which could easily be corrected with half an hour's attention to the subject.

If the Ray bill were passed by Congress, and the general rules in bankruptcy were amended in a few respects by the Supreme Court, the bankrupt law of this country would be a very good one. The act as it now stands, is, I think, in its practical operation, better than any of the preceding bankrupt acts; and, if the act and rules were properly amended, it would become an entirely satisfactory system of bankruptcy administration.

3. PARASITE CORPORATIONS.

BY EDWARD B. WHITNEY, ESQ., OF THE NEW YORK BAR.

[Read Wednesday morning, April 23.]

The traveller in the tropics sometimes comes upon a forest where every tree is mounted by some gigantic parasite plant which flourishes with a brilliant and almost unnatural green, while the tree stands stunted under the strange burden. Upon his return to his native land he wonders to see each working corporation either bestridden by some similar parasitic growth or from day to day expecting its appearance. These recent parasites, by the present fashion, are termed security companies or holding companies. They partake, indeed, of the nature of vegetable growths in that they toil not, neither do they spin. Their object is merely to control the actions of those that do. Each attaches itself to one or more of the working corporations, and manifests independent vitality only on the rare occasions when it appears by proxy at a stockholders' meeting to vote the stock. Yet the parasite dominates the attention of the world, and the working corporation is humbled into obscurity.

The parasite may assume different forms for different purposes. It would be pretentious to attempt an enumeration of the different objects which may be devised and in the future attained — or may even now be planned and in process of attainment — by the astute corporation lawyers of New York, Philadelphia, and Chicago. Some may be harmless in themselves, and worthy of attention only if they illustrate a general power that may be found dangerous to the public interest. I shall refer only to those parasitic forms that are now most in the public eye.

One of these is the corporation of comparatively small capital, organized for the purpose of controlling a previously existent corporation of comparatively large capital. Thus let us suppose a case, perhaps a simpler one than actually exists as yet, of some great industrial or transportation company with a $100,000,000 capital, which is controlled by the owners of 51 per cent. of its stock. These owners desire to maintain their power, but at

less expense. They see other realms to buy, and they want money to make the purchase. Let them organize a new parasite company with any capital that they may see fit to adopt. Let them, as individuals, turn over to the parasite their 51 per cent. of the stock of the actual working corporation. All that is now necessary, in order to continue undiminished their power in the industrial world, is for them to hold 51 per cent. of the stock in their new creation. The rest may be sold to the public. $25,000,000 of their capital is released for the invasion of new territory, and with $26,000,000 they hold the territory that by fair means or foul they have already won.

It is quite conceivable that the process might be repeated. A man of the Cecil Rhodes stamp, who seeks control, would not long advise his syndicate to lock up $26,000,000 where equal power could be secured for $13,500,000; and the leading counsel of the country would be consulted as to whether a second parasite would not be practical and advantageous for the purpose of holding a majority of the stock of the first, so that $12,500,000 more of capital would be released, and new provinces added to the syndicate domain.

But it may be said that the syndicate loses in one direction where it gains in another. It loses the dividends from the corporation which it first controlled, in proportion as it secures dividends from those which its capital has enabled it to annex. Dividends, however, are not the measure of the profit from the control of a gigantic modern combination of capital. Dividends may amount to comparatively a small figure in the calculation of the controlling syndicate. The opportunities of direct profit from its treasury and of indirect profit at every point of contact with the business of the outside world, the political influence and patronage which its control involves, the power of commercial life and death with which it is invested in the case of a great transportation company under our defective laws, may well even permit the syndicate to regard dividends as a factor negligible beyond the point necessary for carrying their investments.

One objection to this class of parasite is that it causes the real corporation to be governed by the votes of the minority. It is one of the rights of the minority interests in a corporation that they should be governed by the majority for the time being. While they cannot control the corporation themselves, they are at least

entitled to demand that it shall be controlled by persons whose interests are the same as theirs, whose gain will be proportionately greater than their own if the enterprise succeeds, whose loss will be proportionately greater if it fails. The State also has an interest in having these manufacturing and transportation companies governed by the real majority of the stockholders, for it may desire to make the persons in control feel the wholesome curb of taxation. Attempts have frequently been made to separate the control of a corporation from its ownership by some device, but the weight of authority has been against them. A stockholder cannot lawfully sell his vote at a given election; and when he has granted away his right to vote, either in perpetuity or for a series of years, the courts have generally refused their aid to the enforcement of the contract. When a new company is formed to take up a bankrupt enterprise, the stock is sometimes issued to trustees to hold for the benefit of all concerned during the period of its infancy, and this of course, as in all trusts, separates the control of the business from its beneficial enjoyment; but if a majority of the stockholders of a solvent concern should attempt to pool their interests for a number of years by giving a proxy to be voted as directed by a majority of this inner combination, so that a minority of the corporation should thereafter govern it, a majority of our States would probably hold the pool illegal. Is the pool, then, to be legalized by simply assuming a corporate form?

But the public is now mainly interested in the development of the parasite corporation because it is the most simple and efficient engine of monopoly that has yet been invented, and may be expected to accelerate the recent movement toward the concentration of the great industrial forces of the United States into the management of a comparatively small group of individuals; and the question arises whether the result is desirable. It may or may not be advantageous economically to the present generation. It may be advantageous economically to the present generation, but not advantageous economically to future generations. It may be advantageous economically both in present and future, and yet not advantageous politically, socially, or morally. Whether the economic advantage of such concentration of industrial power counterbalances its economic disadvantages I do not care to guess. I do not pretend even to an opinion as to whether any living person is competent to judge. One thing, however, is clear. Such an in-

dustrial organization in this country would not be democratic in character. It would be aristocratic; and as long as its aristocrats should recognize an intelligent community of interest among themselves, and the consequent necessity for a common leadership, it would very closely approach the monarchical. Its essential element would be precisely the element which distinguishes a monarchy from a democracy everywhere,— the transfer of voting control from the majority to the minority. It would for the present greatly increase the efficiency of American competition in the markets of the world, for it would have all the advantages that a wisely governed monarchy has over a democracy. There is the least possible friction in the administration of a good and wise monarch. He eliminates competition. He wastes less efficiency in the distribution of patronage. He has only one man's friends to satisfy. Rome ruled the world under Augustus more peacefully and more surely than under the republic. I presume that prices of commodities were lower — in fact, a large number of citizens were fed for nothing; and if there had been a stock market, it would have risen. These advantages must be frankly recognized. They are, in fact, recognized by a large body of the investing and speculating public, who look forward eagerly to the time when industrial concentration shall be complete, and the market values of their stocks shall rise. They yearn for peace and for concentration of power and responsibility as did the Hebrews before Saul, the Romans before Caesar, and the Florentines before Lorenzo de Medici. Nor do I mean, in speaking of the distinguished captains of ancient industry, to intimate that the descendants of our modern financial Cæsars and Solomons will be like Nero or like Rehoboam. We must face the fact, however, that, if the present tendency to universal industrial concentration long continues, it cannot fail to have the most profound effect upon our customs, our prejudices, and our ideals, upon all of our political, social, and individual life; and we must face the fact that the system may prove stable after its founders with their wisdom have departed, and their sons have inherited the voting power of their stock. While the change may be a good one, it is fair to the men who have been so valiantly and vainly fighting against it to recognize that they are the true conservatives of our time, and that the New York financial centre is the centre of the radical party.

The second class to which I have referred includes those asso-

ciations of capitalists which have assumed a corporate form in order more effectually to combine the action of two or more previously existing corporations by the purchase of the majority of their stock. Some, such as the United States Steel Corporation, are highly complex in their organization. I shall take as an illustration one which is applying the principle of its class on the largest scale, but in the simplest form,— the Northern Securities Company. Two great railroad systems, that of the Great Northern and that of the Northern Pacific, extending through all the States of the far North-west, had obtained from the public their franchises, and to a considerable extent their property, upon the implied understanding that they would be managed as independent lines. It was the policy and intent of the United States, as well as of the individual States to whom they owe their immediate duties, that they should remain competing as well as parallel. It was the policy of the railroad companies that competition should cease. In no way, however, have they been able to effectuate their own policy as against the policy of the public. Tacit agreements were not kept. Express agreements were declared illegal by the courts.

Pooling was forbidden by the statute. The amount of their capital stock was too large to be controlled by a single man or by any practicable partnership or unincorporated association. But the gentlemen interested held among them nearly all of the stock of the two railroad companies. What they could not accomplish directly they decided to seek by indirection. At the expenditure of a trifling amount of cash and of a little stationery they procured for themselves a corporate name and a license to hold under that name the stock of other corporations. They transferred their railroad stock from themselves as individuals to themselves as an incorporated association; and, in return, they took to themselves as individuals the stock of the new incorporation. They gave to their managing committee the title of Board of Directors, and they authorized this board to perform two acts a year. One of these acts was to vote at the stockholders' meeting of the Great Northern. The other was to vote at the stockholders' meeting of the Northern Pacific. The effect was magical. Competition ceased. Consolidation was unnecessary, for the two great railroads were henceforth dominated by a single will.

It will be noticed that in companies of this kind there is not

necessarily, or perhaps commonly, any attempt to perpetuate minority control through corporate forms. Not a majority only, but all of the stock of the working corporation, is absorbed by the parasite. It is true, indeed, that the managers intend to dispose of the majority of the new stock without surrendering their control, and through the new combination to secure their own perpetuation in power. Their advantage, however, is indirect. The stability of the management is doubled simply because the capitalization is doubled. It is as hard to dislodge a syndicate of capitalists in control of the operations of a corporation as it is to dislodge a syndicate of politicians in control of the operations of a city. It is easier to revolutionize a small city than a large one,— Harrisburg than Philadelphia. And, in order to diminish the probability of a revolution, it is provided, on the one hand, that the stockholders shall have but restricted opportunities to examine the books, and, on the other hand, that only one-third of the directors shall go out of office in any one year.

There are many economies in material and labor to be effected by any form of combination; but these economies can be obtained by direct consolidation, and it is doubtless to the interest of the public that corporation methods should become as far as possible direct instead of indirect. If corporate organization becomes complex, the public should insist upon being told the reason why. If, instead of a consolidation of corporations A, B, C, and D, we find A buying the stock of B, which buys the stock of C, which buys the stock of D, and all go on apparently operating in independence, we are entitled to suspect that some law or gospel is being evaded. In such cases as that of the Northern Securities Company, however, we seem to see clearly enough the main purpose of the contrivance. I do not come here holding a brief in support of the principle of competition; but the people of the United States, in their statute books, have declared that they believe in competition and want it to continue, and, as long as they remain of the same will, it is important for us to consider whether their will can be evaded by so simple a device.

The question has been curiously complicated by an apparent conflict of jurisdiction between different States of our Union. Minnesota and the other States which granted lands and franchises to the Great Northern Railroad did so, as we have seen, to secure the supposed blessings of effective competition; and, when

their right to these blessings was declared by the courts, it was found impossible to evade the decision by use of any of their own corporation laws. More than a thousand miles away, however, are communities which have openly embarked in the promoting business. Chief among them is the State of New Jersey. That State derives handsome revenues from licenses which it grants, for the asking, to any body of men who are willing to pay a moderate sum in cash for the privilege of acting together as a corporation anywhere, at home or abroad, for any purpose. So long as they pay the price, the promoting State cares not whether they conduct any business within its own limits, whether they hold any meeting there, in what State they do hold their meetings or conduct their business, or whether that State approves of the privileges which they have received. And so certain stockholders of the Great Northern Railway Company, a corporation organized by the State of Minnesota, chief among them being a citizen of Minnesota, and no one among them of any importance being a citizen of New Jersey, joined with some other gentlemen who bore a similar relation to the Northern Pacific Railway Company, a corporation of the State of Wisconsin, and paid the State of New Jersey for what they claim to be a license to conduct the affairs of these two railways in such manner as to defeat the policy of the States from which they had obtained their franchises. When his State objected, the Minnesota capitalist and his friends met her with this answer: "We are not a combination of people. We are only one person, a citizen of New Jersey. We have the right to own property. The stock of a corporation is property. Its owner can do what he wishes with it. You are only trying to execute the public policy of Minnesota. That policy has no force outside the limits of Minnesota. The only public policy that interests us is that of New Jersey, which is altogether different. We can continue our raids upon Minnesota until New Jersey changes her policy, in which case we shall give up the letters of marque and reprisal which we have obtained from that State, and take out new letters from Delaware or West Virginia."

And the answer of the parasite is the same, whatever may be the charge against it: whether that it is so organized as to keep the control of the real working corporation in the hands of the minority instead of the majority of its members, or that it violates the anti-trust law of the United States, or that it has only a

license from some far-off State which has neither interest nor authority in the premises,— the answer is always that a corporation is a person, that a block of stock is just a piece of property, that a corporation may own property, and that a person, corporate or individual, may use any stock that he owns according to his private judgment.

Now, to demonstrate the fallacy of this position, I think it is but necessary to lay aside the fictions of corporation law, and to return, as the great jurists of the recent as well as the remoter past have always returned when the interest of the public required, to the true definitions upon which all accurate reasoning must rest. A corporation aggregate is only a body of men who are permitted to act together in a certain convenient way. They are often, with great convenience, called collectively a person, but only in a figurative sense. They differ from an ordinary partnership only to the extent of the privileges which they have been granted. These privileges have been granted by some State or, in exceptional cases, by the United States. If granted by a State, the privileges must be exercised within that State unless they receive extension elsewhere from some other sovereignty. Whatever act this incorporated body of men may perform outside the boundaries of the State by which they were incorporated must point for its sanction to some provision of the federal Constitution or statutes, or else to the consent, express or implied, of the State within whose limits the act occurs. No State can authorize a combination of men to act as a corporation within another State without that other State's consent, nor can any State give privileges which in the slightest degree obstruct the policy of the national government in matters of interstate or foreign commerce.

If, then, Congress wills that men shall not combine to restrain competition in interstate commerce, what possible authority can they obtain from any State, whether by the particular form of license called an incorporation certificate or any other? And, if Minnesota wills that men shall not combine to restrain competition in the local railway traffic of her own territory, what document can they obtain from an official of New Jersey which can lawfully be used to thwart that will? I know of none, if that will is properly expressed.

Again, in a corporation, as not infrequently happens also in an ordinary partnership, the proprietary interest in the whole enter-

prise is divided up into a certain number of shares, of which each member receives so many in the allotment. In the case of a corporation they call his share a share of stock, and in one sense a share of stock is property. But if one day there were no corporations in the world, and the next day corporations were organized which bought up all the property in the world, the world's wealth would be no greater at the end of the second day than on the first. A share in the ordinary partnership is a right to participate pro rata in the profits, property, and management of the partnership. A share of stock is the corresponding right to participate pro rata in the profits and property of the incorporated body, and, by voting at its annual election, in its management. By the special corporate privileges a share of stock may be separately bought and sold, pledged and bequeathed, without disturbing the operations of the body; and so we come to talk of the share as if it were an entirely independent piece of property. But the purchaser or legatee who takes it takes nothing but a proportionate interest in the common enterprise, with which he forthwith becomes identified.

What, then, happens when the purchaser is another corporation? Let us suppose that two corporations have each ten individual members with one share each, and that one of the corporations buys one of the ten shares of the other. Then the latter is thereafter a body of nineteen men instead of ten; and, of the nineteen, nine continue to vote and draw dividends as individuals, while the other ten vote and draw dividends as a body, their vote being decided by the will of their common agent. Each of these two incorporated bodies must have a special privilege to sustain the transaction. The purchasing body must have been given by the State which incorporated it the special right to purchase stock. The body whose stock was purchased must have been given by the State which incorporated it the special right to have another corporation as stockholder. Every State has undisputedly the power to determine the qualifications of membership of its own corporate progeny, as well as their right to apply for membership in other similar bodies. Hence, when a corporation of one State desires to hold and vote shares in a corporation of another State, the concurrent permission of both these States is a necessity; and, when that permission has been given, the purchasing body, so far as it holds and votes those shares and thus joins in the common

enterprise of which they are a part, is identified rather with the State under whose laws the enterprise is prosecuted than with the State from which its own original corporate privileges were derived.

What, then, is the remedy, if the people disapprove the so-called security corporations, and desire to get rid of them forever? What is the remedy of the other States of the Union if the promoting States insist upon licensing these parasites and sending them out to prey?

As this is not an association of lawyers, I shall not occupy its time by an extended discussion of the purely legal question whether there is a remedy to be found under the present laws. So far as I am aware, the courts have not been asked to consider the questions presented by a security corporation of the first class to which I have referred. The United States has sought in her own courts to sustain her own anti-monopoly laws as against the Northern Securities Company. Those laws have already received large judicial exposition, and their applicability to this new development will probably be rather a question of fact than one of law. Minnesota is seeking to vindicate herself against the New Jersey invasion by the direct remedy of injunction. If it be true that her policy against consolidation of competing lines is fixed and notorious, that the franchises of these two railroads within her limits were granted them in order to secure competition, and that no regulation of rates or other remedy now available to her is adequate to take the place of competition,— if that is to cease, then her cause of action would seem to be complete. If the company indeed is organized for the sole purpose of preventing this competition, then it would seem to be illegal even under the New Jersey laws; for they authorize incorporation only for a lawful purpose. A purpose that can be sought only in Minnesota, and is unlawful there, is not a lawful purpose. Hence it cannot be imputed to New Jersey; and, if the company's certificate had plainly stated that its object was to violate the laws of Minnesota, its suppression would have been the immediate duty of the attorney-general of New Jersey, in comity to a sister commonwealth.

We are more interested in what the States can do in the future to rid themselves of the evil, if it be an evil; and I believe that every State holds a legislative remedy in her own hands, because, subject to the moderate restraints of the Constitution of the United

States, no combination of individuals may use corporate privileges within her limits without her consent. There are some ancient bodies whose charters are inviolable under the Dartmouth College case, but for present purposes they are negligible. Excepting these, the privileges which the State has granted she may amend or alter or repeal. The privileges to her own incorporations of subscribing to the stock of other companies she may limit or deny. The corresponding privilege of admitting other incorporations to membership may be likewise limited or denied. The privilege under which corporate control has already been obtained may be put an end to. Reasonable time must be allowed for the stock-holding corporation to divide up its stock or otherwise to dispose of it. The stock may not be forfeited or forced to a sacrifice at sudden sale; but, if any parasite, domestic or foreign, continues to control the stock of any corporation after time enough has elapsed for the State by which it was incorporated to enact the necessary statute, and for the parasite under reasonable conditions to part with that stock, it is because the State is satisfied with the conditions that exist. Of possible remedies I need suggest only one. A law that no corporation shall hold more than so much in par value,— say, for instance, as now a moderate sum, $100,000,-000,— or so much in proportion, of the stock of any company, will accomplish the result. If the American public believes all security corporations, or any class of security corporations, to be a public evil, through their legislatures they may apply an efficient remedy,— a remedy which will restore the control of the working corporations to the majority of the persons interested therein, will curb the enterprise of the promoting States, and will give the advocates of competition one more opportunity to resist the tendencies of the present age.

4. THE CONCEPTION AND REALIZATION OF NEUTRALITY.

BY THE HON. DAVID J. HILL, LL.D., ASSISTANT SECRETARY OF STATE.

[Read Wednesday evening April 23.]

Among the causes which have aided in the pacification of the world none has been more potent than the practice of neutrality by sovereign nations. It is the purpose of this paper to trace the origin of this practice, to show the causes of its progress, and to measure its importance to the welfare of mankind.

So long as the Roman Empire continued to regulate the affairs of Europe, the idea of indifference to the conflicts in which it was engaged was impossible; for imperial unity involved all parts of the empire in active support of the wars by which Roman dominion was maintained and extended. When, in the fourth and fifth centuries of our era, the imperial system began to go to pieces and the barbaric kingdoms were formed upon its ruins, no international system developed before the Frankish kingdom, extending its conquests in every direction and uniting its interests with those of papal Rome by the coronation of Charles the Great as Emperor of the West, had reconstituted the imperial power in Western Europe. The weakness and subdivision of that empire after the death of Charles the Great left the local barons to the chances of a general struggle for supremacy during the long period in which the process of feudalization was creating the beginnings of local territorial authority, destined at last to develop, in the heat of a bitter and protracted conflict, into the modern state system, in which the rights of local sovereignty were affirmed and the great nationalities became consolidated in the form of independent monarchies. Then followed the struggle for a system of equilibrium by which the newly formed nations could maintain their independence, and prevent the revival of that imperial supremacy from which they had all escaped,— a struggle in which all were compelled to participate as a means of preserving their existence.

There was, therefore, no period of time in the history of Europe, from the rise of the Roman Empire to the beginning of the seventeenth century, when either the right or the duty of national neutrality could find a place in the thoughts of jurists or statesmen. A careful review of the history of jurisprudence during these centuries shows that no such idea was ever seriously entertained. Throughout the whole period of Roman domination we detect hardly a faint glimmering of the conception of neutrality. In mediæval times the total absence of the idea is notable. Within the empire no one of its constituent parts could be inactive in the struggles in which it was engaged, and outside of the empire existed only the infidel, with whom there could be no peace. Machiavelli well expressed the view of his generation when he condemned neutrality on the ground that it was always more profitable to side with one or the other of the belligerents. The Borgias considered that they were sufficiently neutral in permitting both sides to enlist troops in Rome, for the hire of soldiers to warring nations was esteemed by them a legitimate industry. Nor was the policy of the Borgias exceptional. "Foreign assistance was always freely forthcoming for the belligerents of the Middle Ages. Not merely were private adventurers ever ready for foreign warfare; not merely did penniless knights-errant and needy squires, in time of domestic peace, wander abroad, like the ancient Vikings, in search of honor and profit: Brabançons and Genoese cross-bowmen took service in troops with the monarchs of England and France; skilled commanders, like Hawkwood and Bertrand du Guesclin, led well trained and organized armies, under the name of Free Companies, to the banners of prince after prince; and princes and kings themselves not only permitted recruiting within their borders for foreign warfare, but despatched, and even in person led, auxiliary regiments to the assistance of one or the other belligerent, while claiming to be on terms of undiminished general friendship with the assailed opponent."*

If the time was oblivious of the duty of neutrals, it was not less regardless of neutral rights. Military assistance and trade with an enemy were punished, when possible, with equal severity; and all commerce was practically regarded as contraband. Edward I. endeavored to annihilate the trade of the Flemings with Scotland, and in 1295 required masters of neutral vessels lying in English

* Walker, History of the Law of Nations, i. pp. 135, 136.

ports to give security not to trade with France. The sanctity of neutral territory was habitually disregarded. On the sea the "Consolato del Mare," following the treaties of the thirteenth and fourteenth centuries, laid down the simple rule, "Confiscate the goods of your enemy: respect the property of your friend," regardless of the neutral flag. By a rule of the same maritime code a neutral vessel, whose master refused to carry belligerent goods at the command of his captor, might be sent to the bottom of the sea without any compensation to its owner.

Even during the greater part of the sixteenth century the idea of neutrality had made so little progress that the subjects of states not directly engaged in war were regarded merely as *non-hostes*, or *medii in bello*, without other rights or duties than those of mere non-combatants. How far removed from incorporation in accepted public law the idea of neutrality was in the beginning of the sixteenth century, is evident from the fact that it then first began to be specifically embodied in treaties; as, for example, in those between Henry VII. and Maximilian, King of the Romans, in 1502, and between Henry VII. and the Elector of Saxony in 1505, who bind themselves expressly to neutral conduct, thereby showing the recognized absence of the idea from the accepted law of nations.

Not until the wars of religion had lapsed into wholly political conflicts could the conception of neutrality obtain acceptance; for Christendom could not recognize the right of any prince to be neutral in the heated struggle for principles which, like those of religion, were believed to be of universal interest and significance. Religious partisanship continued to be regarded as a justification for armed intervention even in the seventeenth century, James I., of England, giving permission to the Dutch in 1603 to enlist troops in Scotland; and as late as 1620 London was placarded with royal proclamations authorizing the enlistment of soldiers by Gustavus Adolphus in his campaign of the Thirty Years' War. But the same Englishmen who had applauded the enlistment of their countrymen by the royal authority to serve the German Protestants against the Catholic emperor and the Dutch against the Spaniards felt it a shame when Charles I. sent his troops to the King of France for the subjugation of the Huguenots.

When, in 1625, Grotius published his great work, he founded his system of public law upon the idea of territorial sovereignty,—

the great principle which now underlies the whole political structure of contemporary Europe. All the accepted rights and duties of neutral powers were, no doubt, logically involved in that fundamental principle; but the great jurist entertained but a dim perception of the implications which now seem to flow by necessity from his central doctrine. "It is the duty of those who profess neutrality in war," he says, "to do nothing toward increasing the strength of a party maintaining an *unjust cause*, nor to impede the measures of a power engaged in a *just and righteous cause*,"—which is simply an elaborate way of saying, *Do not help the wrong side*. It is a sufficient commentary upon juristic ideas at the beginning of the seventeenth century to say that the greatest jurist of that age had formed no conception of neutrality as a right or a duty of sovereign nations.

II.

It is events, rather than the utterances of publicists, which have established the laws of nations. The modern conception of neutrality had its birth in conflicts upon the sea, the common heritage of all nations and the exclusive possession of none. But long after the general suppression of piracy the rights of neutral commerce were still in abeyance. Some of the old maritime codes respected neutral property, even on a belligerent vessel; but even in the seventeenth century examples were not unusual of the confiscation of a friendly ship because laden with an enemy's goods. Nations supported or opposed the claims of the neutral trader, according to their temporary interests; and as late as 1617 the Venetians compelled English merchant vessels to unload their cargoes and serve in war against the enemies of Venice.

The first important step toward the definition of neutral rights was the delimitation of neutral waters. The earliest public proclamation of neutrality preserved to us was that of James I., of England, in which in 1604, during the contest of Spain and the United Provinces, he forbade the exercise of any act of belligerency within prescribed limits, and extended his protection to all merchant vessels within "the King's Chambers," as he called the waters enclosed by "a straight line drawn from one point to another about the realm of England."

This manifesto did not prevent the Dutch and Spanish fleets from engaging in a furious battle, in the following year, in the very

harbor of Dover; and it was only after the victory had been won by the Dutch, and the captives, tied two and two, were thrown into the sea, that the castle battery opened fire in indignant execution of the king's decree. In 1624, a French vessel being attacked by a Dutch ship as she was leaving an English port, in the words of the chronicler, "a king's ship came in to part them, and letting fly equally at them both, with blows of cannon equally distributed, persuaded them to peace."

Thus was inaugurated the principle of territorial waters, now by general consent, with few exceptions, confined to the three-mile limit, but finally brought to general recognition only after a long period of struggle and compromise. The exaggerated pretensions of Spain and Portugal to the sovereignty of the seas of the New World, by virtue of the famous decree of Pope Alexander VI., had to be bitterly contested by Holland, whose great publicist, Grotius, in his "Mare Liberum," contended for the common right of all nations to enjoy free navigation. The equally groundless claims of England, put forth by Gentilis in 1613 and by Selden in his "Mare Clausum" in 1633, assuming territorial jurisdiction over the "Narrow Seas," or waters between Great Britain and the mainland, had to be stoutly resisted by France and other maritime powers as an encroachment on their rights, eliciting for a time the curious phase of opinion, represented by Puffendorf in 1672, that narrow seas naturally belong equally to the sovereigns of the lands laved by their waters.

Finally, as the result of armed contentions prosecuted through years of struggle, emerged the two great principles of the freedom of the open sea and the inviolability of territorial waters,— principles which lie at the basis of the modern conception of neutrality; on the one hand, regarding the great deep as the common possession of mankind, and, on the other, prohibiting conflict within the limits of recognized maritime jurisdiction. Strange as it may seem, the inviolability of neutral territory on land was not conceded as a sovereign right until territorial prerogatives had been first vindicated upon the sea. The insular isolation of England and her maritime strength rendered possible the assertion of a principle that has finally been universally recognized.

The whole modern development of neutrality is derived from the reconciliation of two opposing principles,— the right of a peaceful nation to carry on commercial intercourse with other

nations and the right of a belligerent power to protect itself from the injury that results from commerce with its enemy. Unrestricted, the right of commercial intercourse includes the prerogative of performing all those activities which pertain to the peaceful interchange of commodities between nations,— the manufacture, sale, and delivery of such objects as it is found profitable to produce and to export. But in times of war this right is of necessity restricted by the right of a belligerent nation to prevent such commerce with the enemy as specifically enables its antagonist to resist its military measures. The reconciliation of these two opposing rights has been a long historic process, not yet entirely complete.

Such writers as Bynkershoek and Vattel, even in the middle of the eighteenth century, maintained the right of neutral states to permit the enlistment of soldiers within their territories. The former says, "I think that the purchase of soldiers among a friendly people is as lawful as the purchase of the munitions of war." * Vattel remarks, "The Switzers grant levies of troops to whom they please, and no power has hitherto thought fit to quarrel with them on that account"; † but he thinks complaint might arise if the privilege were accorded to one belligerent and denied to another. Progress in the apprehension of neutral duty gradually modified this view; but it was not until after the middle of the nineteenth century that the Swiss Confederation passed a law abolishing the system, and making it a penal offence for foreigners to enlist Swiss soldiers for service in a foreign state.

Grotius correctly describes the practice of the seventeenth century in stating that the right of passage through neutral territory could, if denied, be taken by force.‡ Vattel, however, notes an advance of thought in stating that it is a violation of sovereignty to enter territory without the consent of its sovereign, except in case of extreme necessity, when, he thinks, an army, to avoid destruction, may force its way, "sword in hand," through neutral territory.§ As late as 1815 the allies compelled the Federal Council of Switzerland to grant permission for the passage of invading troops; but practice and opinion have since respected the inviolability of neutral soil, even to the extent of denying the right of a neutral to permit the passage of troops.

* Bynkershoek, Quest, Jur. Pub., i., c. xxii.
† Vattel, Droit des Gens, iii., § 10.
‡ Grotius, Dès Jure Belli ac Pacis, B. I., c. ii., sec. x.
§ Vattel, Droit des Gens, iii., § 122.

Numerous acts, denied to neutral states as such, are, nevertheless, still allowed to their individual citizens willing to take the risks of performing them, such as loaning money to belligerent governments, supplying arms and munitions of war, and enlisting in alien territory to serve in foreign armies. Individual publicists, as Bluntschli, Phillimore, Halleck, and Calvo have indeed declared some of these individual rights to be violative of neutrality; but practice has sustained these privileges, and other publicists have as strongly defended them. In our Civil War the bonds of the Confederate States were publicly taken in England, Germany, France, and Holland without interference or reprisal; and in 1872 ordnance stores were sold, even by the government of the United States, with a knowledge that they were purchased by agents of the French government for use in the Franco-German War, and this act was defended by a committee of Congress on the ground that it was a public sale authorized before the war broke out, and without the purpose of influencing the strife.

The principal modern controversies regarding the prerogatives of neutrals have been connected with the definition of contraband of war. From one point of view, everything is contraband which aids a belligerent in attacking or resisting his enemy. For reasons growing out of her position as a maritime power, England has always endeavored to widen the idea of contraband, and to interdict all commerce with her enemies; and her superior naval armament has enabled her to enforce her doctrine with a merciless execution. It was in resistance to the arrogant pretensions of England on the sea that the armed neutrality of 1780 was conceived by the great minister of Louis XVI., Vergennes, organized by Catherine II., of Russia, and sustained by an almost united Europe,— a league for the defence of neutral commerce which greatly facilitated the independence of the American colonies. The doctrines sustained by the league of the armed neutrality were: (1) the right of neutral ships to sail from port to port, even on the coast of belligerent nations; (2) the idea that free ships make free goods, except contraband of war; (3) the determination of the nature of contraband by the Russo-British treaty of commerce of June 20, 1766; (4) the proposition that no blockade is to be considered actual unless it is effectual; and (5) the demand that these principles prevail in judging the legality of prizes.

It would be tedious to recount the vicissitudes of these reason-

able doctrines, triumphant for a time through the united efforts of Europe, dishonored and discarded by their most zealous advocates in the tumult of the French Revolution, reinstated by the second armed neutrality in 1800, again abandoned in the Titanic maritime struggle provoked by Napoleon's Continental System, and finally accepted as a permanent part of the law of nations by the adherents to the Declaration of Paris of 1856, which abolished privateering, established the rule that the neutral flag protects the goods of an enemy and the freedom of neutral merchandise on an enemy's ship, except contraband of war, and limited the right of blockade by its actual effectiveness.

III.

The part played by the United States in realizing the great conception of neutrality forms one of the most honorable chapters in our national history. Earnestly desiring peace and amity as the essential conditions of civil development, our government hastened from the first to incorporate in its earliest treaties standards of neutral right and duty hitherto unheard of in the history of the world. In the treaty of 1778 with France, contraband was greatly restricted by definition; and in the treaty of 1785 with Prussia it was stipulated that even arms and munitions of war, if captured, were to be paid for at their full valuation, thus exempting all private property at sea from confiscation. "The policy of the United States in 1793," says a great English writer, "constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent upon neutrals. But it represented by far the most advanced existing opinions as to what those obligations were; and in some points it even went further than authoritative international custom has, up to the present day, advanced. In the main, however, it is identical with the standard of conduct which is now adopted by the community of nations." *

Basing its recognition of other governments upon the new principle, that the will of a nation, in choosing its government, is the only important matter to be regarded, and rejecting the old doctrine of dynastic legitimacy, the United States thereby made an important contribution to the law of nations, and by its neutrality act formed the first systematic plan that had ever been formed

* Hall, A Treatise on International Law, p. 594.

for the enforcement of neutral duties. The acts of 1794 and 1817, culminating in the comprehensive statute of 1818, whose provisions are now embodied in the Revised Statutes, opened a new era in the realization of neutrality. A similar act, though less effective in form, was passed the following year by the British Parliament; and analogous laws, or regulations, were from time to time made by other governments. Thus, following the example of the United States, all civilized countries have at last come to recognize the duties of neutral countries as a part of the public law of nations.

The course of the United States in vindicating neutral rights has not been less conspicuous than its initiative in prescribing neutral duties. The decrees of the National Convention of France, and, later, those of Napoleon, on the one hand, and the orders in council of Great Britain, on the other, threatened to sweep American commerce from the ocean; but a stout resistance finally prevailed, and pecuniary indemnities for a part of the losses sustained by American traders were subsequently obtained from both countries. The pretensions then put forth by European powers would now be regarded as insufferable impertinences and open violations of the established system. Their fate has been shared by the preposterous claims respecting visitation and search in time of peace and the barbarities of impressment, so long endured by this country.

But the great hour of triumph for the enforcement of neutrality came at the close of our Civil War, when Great Britain was called upon to answer to our "Alabama" claims. The Treaty of Washington, concluded on May 8, 1871, for the settlement of those claims, laid down rules for the guidance of the arbitrators which required "due diligence" to be exercised by a neutral government to prevent violations of the principles of neutrality; and the decision of the tribunal was that "due diligence" ought to be exercised by neutral governments *in exact proportion to the risks to which either of the belligerents may be exposed* from a failure to fulfil the obligations of neutrality on their part. So rigorous a standard of neutral responsibility, and the award of an indemnity of $15,500,000 in gold, to be paid by Great Britain to the United States, on account of the negligence of the former government, brought the world to a recognition of the fact that neutral governments are charged with immense responsibilities. But the chief

effect of the Geneva decision was to call attention to the fact that the complication of international relationships has reached a stage of development where the conception of neutrality becomes almost incapable of realization; for who will attempt to measure the "exact proportion of the risks to which either of the belligerents may be exposed"? It is evident that it is usually unequal, which seems to require a different course of action toward belligerents in different wars, and even toward different belligerents in the same war, so that the conception of neutrality, in the old sense, disappears altogether.

A wholly inland belligerent, for example, possessing no means for procuring supplies or of arresting contraband by sea, would be exposed to enormous risks of injury by war with a maritime power able to keep up its own supplies and cut off communication with its enemy. Does neutral duty require that the enormity of this risk be measured by other nations and their trade with a nation with which they are at peace be suppressed, in order to diminish the disadvantages of an unfortunate belligerent?

The rules of Washington and the interpretation put upon them have not found general acceptance, even among American jurists. As one of the most noted has well said:—

"It will be at once seen that these rules, though leading immediately to an award superficially favorable to the United States in the large damages it gave, placed limitations on the rights of neutrals greater even than those England had endeavored to impose during the Napoleonic wars, and far greater than those which the United States had ever previously been willing to concede. If such limitations are to be strictly applied, the position of a neutral, so it may be well argued, will be much more perilous and more onerous, in case of war between maritime powers, than that of a belligerent. Our government, to fulfil the obligations cast upon it by these rules, would be obliged not only to have a strong police at all its ports to prevent contraband articles from going out to a belligerent, but to have a powerful navy to scour the seas to intercept vessels which might elude the home authorities and creep out carrying such contraband aid. It must be recollected that not only our Atlantic and Pacific coasts, but our boundary to the north and to the south, contains innumerable points at which belligerents can replenish their contraband stores, and that nothing but a standing army or navy greater than those of any European power could prevent such operations. Nor would this be the only difficulty. No foreign war could exist without imposing upon the governments of neutral states functions in the

repression of sympathy with either belligerent which no free government can exercise without straining its prerogatives to the utmost." *

No nation, except the United States and Great Britain, has formally accepted the doctrine of the Geneva tribunal; but, if it ever should be generally accepted, justice would require that the duties to which that doctrine binds should be offset by an enlargement of neutral rights, for a foreign war would be a calamity so great that unusual measures on the part of the nations would be justified to avert it. Such an offset could be found only in an extension of the right of intervention for the sake of peace. In truth, our own government has recently exercised this right in its interference to terminate the unhappy war that was so long waged in Cuba. Our government and our people were worn out with observing the obligations of non-intervention during that protracted and pathetic contest, and at last determined to suppress it. The United States, in that crisis, assumed the part of a great pacificator, and, when its patience became exhausted with the strain of prolonged endurance, bade its great guns thunder, "Let us have peace."

And this is the consequence which must result universally from the over-tension of neutral duty. So long as the course of events tended toward the extension of neutral rights, neutrality seemed a blessing to great portions of mankind, who were thereby absolved from participation in the conflicts of others; but now that the tendency is to obstruct the freedom of industry and commerce, for which the great battle of neutrality was fought, and to impose new burdens and restrictions upon neutral nations, it becomes evident that this phase of progress in the course of social development is, in reality, but negative and transitory, and that no nation can be indifferent to the quarrels of others. The conception of neutrality has been a great contribution to human progress, but it is not a final term. It has produced the condition of regional responsibility,— the ethical correlative of territorial sovereignty. It has said to the world, Let those who are disposed prove that peace is better than war, and has thereby limited the area of belligerency. But it is now seen that, although the independence of peoples is a great and noble idea, the interdependence of mankind is a more deeply rooted and essential truth. The international ownership of

* Wharton's Digest, vol. iii. p. 650.

the great lines of oceanic transportation is only an outward sign of a far more significant fact,— the community of interests between the nations. The burden of neutral obligations between great powers in time of war renders the possibility of such a calamity dreadful to contemplate and almost paramount to war itself. Henceforth men will hear of wars and rumors of wars with saddened hearts and apprehensive minds; and as once, to vindicate the rights of peaceful commerce, great armed neutralities were formed, so in the future great armed pacifications may become the means of a higher social evolution. The "sovereignty of nations" is a formidable term, and most jealously guarded by those who represent its interests; but the sovereignty of humanity is a deeper reality, and marks a higher stage of political development. Given as many centuries as the realization of the conception of neutrality has required, the rights of peace may also be established among men. The days of complete disarmament may never dawn; but there is comfort in the thought that the greatest war-lord of Europe, commanding the most disciplined armies, has during his entire reign been willing and able to keep the peace. A generation has grown from infancy to manhood without witnessing a European war. A generation of Americans has reached middle life without participating in any war but one with the noble purpose of commanding peace. Behind these conditions are mighty social forces which are augmenting in power from day to day. They have claimed and won the right to pursue their path of progress without being drawn into conflicts which they believed did not affect them. They now perceive that every human interest is affected by every serious conflict, and they will strive to maintain the peace of the world as they have striven to secure the right of neutrality. The workers in the field of social science have no more vital problem to solve than that which engages the constant attention of all intelligent statesmen and diplomatists,— the problem of still further establishing the interests of peace by steadily diminishing the incentives that urge toward war.

III. DEPARTMENT OF HEALTH.

1. SOME PROBLEMS IN MUNICIPAL SANITATION, FROM AN EXECUTIVE STANDPOINT.

BY WILLIAM C. WOODWARD, M.D., LL.M., HEALTH OFFICER, DISTRICT OF COLUMBIA.

[Read Thursday morning, April 24.]

There are no problems to-day of more importance to the human race than are those associated with municipal sanitation. In any case important, their momentous character has become greater and greater with the increase in the size of cities and towns. Nor does the importance of these problems depend merely upon their relation to the comfort and longevity of the individual. The future vitality of the race lies wrapped up in the vitality of the present generation, and the productiveness of the nation is very closely related to the physical stamina of the individuals of which it is composed. The scientific problems connected with the sanitation of cities are much nearer solution than are the administrative. Experiment and logic in the laboratory and library tell what ought to be done, and may even suggest how to do it, but when the executive officer comes to act, he encounters at once an established order of things which he cannot ignore or alter. He must adapt the recommendations of science to the requirements of law and custom, and, sometimes, after the adaptation there is but little evidence that science has ever been consulted.

Admitting that the end and aim of municipal sanitation is the conservation of public health, the determination of that form of administration best adapted to secure this end is a matter of prime importance. There is a tendency at present to do away with the old-fashioned board of health, and to substitute therefor a single officer known as the commissioner of health, the health officer, or by some similar title. Whether this is a step in the

right direction is open to question. Boards of health are usually vested with authority not only to administer laws, but also to enact them. But, when a health officer is substituted for a board of health, he is not ordinarily granted the legislative power which belonged to it. Such authority remains in the State legislature or is vested in the city council.

The great advantage of a single executive over an executive board is promptness and decisiveness of action, and definite location of responsibility. This advantage has reference only to administrative work. From a legislative standpoint these features are not so important as are a nice appreciation of all rights involved and a knowledge of the principles of law applicable thereto. Manifestly, these qualifications are more likely to be found in a body of men taken from various walks of life than in a single officer. Even, therefore, ignoring the most serious objection to combining in one man executive and legislative functions, — that is, that it tends to create an autocrat,— there are good reasons why a health officer should not have legislative authority. It may be questioned, however, whether the reservation in the legislature or the vesting in the municipal council of the legislative authority ordinarily delegated to the board of health has been conducive of as good results as has the transfer of administrative power to the health officer. The formulation and enactment of sanitary regulations require special knowledge and cool and mature deliberation, such as are not often found in large elective assemblies. The special knowledge required for the enactment of these laws is not altogether medical, although chiefly so; it involves matters of engineering, of commerce and manufactures, and of law. The popular assembly may or may not have these. It is very apt to be devoid of the prime requisite; that is, a knowledge of medicine. A popular assembly in enacting legislation relating to public health is likely, too, in time of manifest danger to be controlled by panic, while during periods of quietude lethargy is apt to rule. For these reasons it may be seriously questioned whether a board of health, consisting of from five to seven representative citizens, properly compensated for their services and with secure tenure of office, would not discharge the ordinary legislative functions of a board of health better than can a State legislature or a city council.

The best organization of a health department depends largely

upon the functions with which it is endowed. Usually, these group themselves under two headings,— inspection service and clerical work. The inspection service is naturally divided along certain lines,— general sanitary inspection, food inspection, and inspection and control of contagious diseases. Laboratory work in chemistry and bacteriology is practically a branch of the inspection service. The registration of deaths, births, and still-births, is merely a clerical function. The inspection service and the clerical work should each be under a single officer, responsible directly to the chief of the department. Further subdivision of the work will naturally depend upon the size of the department. Single officers in charge of nuisance inspection, food inspection, and inspection and control of contagious diseases, are desirable. Whether the laboratory service should be controlled by an officer of the same rank is questionable; the supervision of this work can be effected in this manner or by the officers responsible for the inspection of food and for the management of the contagious disease service. The inspection service is the real working arm of the department, to which the clerical branch is a mere accessory. The clerical work of a health department is in no way peculiar except in so far as it relates to vital statistics. It is, however, the interpretation of such statistics rather than their compilation that is apt to cause difficulty.

In order to secure satisfactory assistance in the clerical branch of a health department, it is essential merely to keep it free from political and social affiliations and to pay living salaries; to make it an organization for the transaction of business, and not a mere stepping-stone to social or political recognition. But to obtain proper help in the inspection service is not easy even under those conditions. There are no schools for the education of sanitary inspectors, nor does any line of private work fit a man for service as an inspector. Trained inspectors do not exist except as they have been created by particular departments of health; and, when such men are properly trained, they are apt to remain in the service of the department in which they have been educated. In any case they are not likely to leave the community in which they have been trained, to settle elsewhere, unless inducements can be held out in the way of salary and tenure of office such as do not now ordinarily exist in American cities. Unfortunately, therefore, each department must train its own sanitary inspectors. The develop-

ment of such officers consumes time and incidentally embarrasses the inspection service. Moreover, the field for employment is so small, tenure of office so uncertain, and compensation so inadequate, as to prevent the men best qualified for the work from undertaking it.

The condition with reference to the inspection of food is not much better. Veterinary surgeons can be had who are more or less competent to inspect dairy farms and live stock and to pass upon the wholesomeness of meat products. They are, however, ordinarily unacquainted with the inspection of marine products and of vegetables. So the hotel steward, who can pass generally upon the grade of food, cannot always determine whether meat is or is not diseased. And, finally, the man who has the necessary technical skill is too often wholly devoid of the tact so essential to the orderly performance of such work. Here, then, as in the sanitary inspection service, the inspectors must be educated in the department; and the selection of promising candidates is rendered difficult by the same conditions which render it difficult to procure satisfactory sanitary inspectors.

Trouble in securing competent officers in the contagious disease service and competent chemists and bacteriologists to take charge of the laboratories arises chiefly from the uncertain tenure of office and the inadequacy of compensation. But the fact that a man has the degree of doctor of medicine does not necessarily make him a competent inspector of contagious diseases. He must have a certain aptitude for such work and be a man of more than ordinary ability. Even then he must learn by experience how to perform his duties without unnecessary friction. The danger to which those engaged in this work are exposed should entitle them and those dependent upon them to pensions, just as much as do the risks assumed by policemen and firemen entitle them to such benefits.

If it were possible to limit the appointment of inspectors to those who are perfectly adapted to such work, the method of directing and supervising them in the discharge of their duties would not be of so much importance and so difficult as in practice it is found to be. Inspectors, as a class, are conscientious, energetic, intelligent men; but among them, as in every other class of workers, a careless, incompetent, or morally unfit workman occasionally appears. For some classes of inspectors it is impos-

sible to lay down definite hours: for practically all it is impossible to lay down definite beats. Much depends upon the nature of the service to be performed. While something can be determined as to the amount and character of work done by written reports submitted from day to day, commonly the only thing that compels an inspector to pursue his regular duties within assigned hours and within the district laid down for him is a conscientious regard for duty. An inspector's district is ordinarily so large and his tours through it so erratic — necessarily so on account of the varying sources of complaints — that he cannot be expected to be at a given place at a given time. Whether in any case service of notice has been properly made or properly omitted, and whether a notice served has been properly complied with when so reported by an inspector, can be ascertained only by further inspection by a superior officer. And the extent to which nuisances exist in a given district, not complained of and unnoticed by the inspector assigned to that district, can be determined only in a similar manner. The supervision of food inspection is especially difficult, as the dealer is not likely to complain of laxness on the part of the inspector, and the amount of food which each inspector has to examine is so great that if the sale of any particular piece of bad food is complained of, the inspector cannot necessarily be charged with neglect because he did not see it in time to prevent its sale. And too often, in cases in which complaint is made of improper conduct on the part of an inspector, whether a sanitary or a food inspector, the matter resolves itself into one of veracity between him and the complainant.

The uniforming of inspectors might accomplish something toward enabling those who are tempted to neglect their official work during official hours to resist temptation. A uniform would at least fix the eyes of the public on them, and render it much more likely that neglect and misconduct would be reported. A possible objection to the plan is the feeling which some citizens have with reference to the visits by such inspectors,— viz., that they suggest to those who see the inspector's entrance and exit not a mere visit for the purpose of investigation, but rather that the premises are, in fact, insanitary; and even the dirtiest citizen may not like his neighbor to know that his shortcomings are matters of official notice. There is less objection, of course, to the uniforming of food inspectors, as it is generally understood that their visits are supervisory only.

How to discipline negligent inspectors and clerks is sometimes an embarrassing question. Incompetent ones should be discharged; but competent men, who are too valuable to be disposed of in that way, occasionally seem to need moral stimuli stronger than mere reprimands. For them, it seems, machinery should be provided for due trial and for meting out just punishment in the way of fines and suspensions for dereliction in the performance of minor duties. So long as the only mode of discipline is by dismissal, so long will discipline not be enforced.

The discovery of a method of securing prompt and accurate returns of births and of contagious diseases is greatly to be desired. It is comparatively easy to secure returns of deaths by preventing the interment of human remains without permits issued by the Health Department. Registration of the death is effected by the application for the burial permit. No such method can be applied, however, to returns of births. The fact that a given child is born does not come to the knowledge of the registering officer unless its birth is registered, and the absence of registration does not ordinarily come to the knowledge of the family and of neighbors who are aware of the birth. Some States have endeavored to secure more nearly complete returns of births by compensating the person making such returns, but with what success is not known.

How to secure prompt and accurate returns of contagious diseases is a problem resembling in some respects that of which we have just spoken. When the placarding of premises follows the receipt of report, interested neighbors are apt to bring the case to the attention of the health department, if they observe the absence of the customary placard and if they know of the existence of the disease. But it is much easier to conceal a case of contagious disease than it is to conceal a recent addition to the family; and, when placarding and quarantine are the consequences of allowing a case to become public, there is much more reason for doing so. In cases of diseases which are required to be reported, but in which placarding and quarantine are not required,— as, for instance, typhoid fever,— neighbors are more apt to know of the existence of the disease, but are not likely to be informed as to neglect of registration. Records of births and of contagious diseases must be regarded, therefore, merely as indices to the birth-rate and to the prevalence of such diseases, and not as mathematically correct

statements of the number of births and of cases of such diseases.

Another obstacle in the way of the enforcement of laws requiring contagious diseases to be reported arises from the difficulty of getting evidence necessary to sustain a criminal prosecution for failure to make the required report. In such a prosecution, it is necessary to show beyond a reasonable doubt that the case out of which the prosecution arose was a case of contagious disease, and under some statutes that the attending physician knew it to be such. As the health officer ordinarily has no opportunity to examine the patient, it is next to impossible for him to show the nature of the disease from which the patient is suffering. As he is entirely unaware of the innermost workings of the attending physician's mind, it is, if the physician undertakes to conceal it, next to impossible for the health officer to state with corresponding certainty whether such physican did or did not rceognize the nature of the malady.

These are some of the executive problems connected with municipal sanitation, the organization of the department, the selection of inspectors, the supervision of the inspection service, the registration of births, and the registration of contagious diseases. They are not all of the unsettled problems connected with such work. Neither are they peculiar to any one city. One place is embarrassed by a poorly organized sanitary department, a second by failure of the city council to provide sufficient compensation for its inspectors, a third by the failure of the community to support the contagious disease law, and so on. They have been presented to you not merely to elicit your co-operation in their general solution, but that you may be induced hereafter to suspend judgment against any health officer who may seem not to be doing his full duty until you ascertain whether he has or has not been equipped with the machinery necessary to enable him to do the work assigned to him.

2. MILK, BUTTER, AND BUTTER SUBSTITUTES, IN RELATION TO PUBLIC HEALTH.

BY GEORGE M. KOBER, M.D., OF WASHINGTON, D.C.

[Read Thursday morning, April 24.]

Much has been said and written on the subject of milk in relation to public health during the past ten years. Indeed, the production of pure milk may well be considered one of the most important problems which confront the sanitarian.

Numerous instances have been observed in which outbreaks of typhoid fever, scarlet fever, and diphtheria, by their sudden and explosive character, affecting families living in streets and localities supplied by the same milkman, naturally pointed to the milk supply as a common cause; but not until 1857 was it pointed out definitely, through Dr. Michael Taylor, an English physician, that cow's milk might serve as a medium for spreading typhoid fever from a dairy where the disease prevailed. In 1867 he also showed that scarlet fever might be distributed in the same way. In 1877 Mr. Jacob traced a diphtheria epidemic at Sutton to the milk supply, and in 1872 Macnamara traced an outbreak of cholera at Calcutta to an infected dairy. These facts could not fail to sharpen the powers of observation in others; and in consequence similar outbreaks were reported more frequently, so that Mr. E. Hart, the editor of the *British Medical Journal*, was enabled to present to the International Medical Congress, held in London in 1881, the history of 50 outbreaks of typhoid fever, 15 of scarlet fever, and 7 of diphtheria, all traceable to the milk supply. In a similar communication made before the International Medical Congress at Paris in 1900, I presented my conclusions based upon the tabulated histories of 330 epidemics spread through the medium of the milk supply.

It has been demonstrated by numerous bacteriologists that disease germs may not only survive, but in many instances actually proliferate, in the milk; and it is not a difficult matter to point out the many ways by which these germs gain access, especially when some of the employees are also engaged in nurs-

ing the sick, or are suffering themselves from some mild infection while continuing their duties, or are convalescent from the disease. It is quite conceivable how animals wading in filth and sewage-polluted water may infect the udder with the germs of typhoid fever, and through it the milk. We can also appreciate how infected water may convey the germs by the washing of the utensils or by deliberate adulterations. Infection may also take place through the agency of scrubbing-brushes, dish-cloths, exposure to infected air, or flies.

Of the 195 epidemics of *typhoid fever* tabulated by me, there is evidence in 148 of the disease having prevailed at the farm or dairy. In 67 instances the infection probably reached the milk by percolation of the germs into the well water with which the utensils were washed. In 16 of these the intentional dilution with water is a matter of evidence. In 3 instances *Bacillus coli communis* and typhoid germs were demonstrated in the suspected water. In 7 instances infection is attributed to the cows wading in sewage-polluted water and pastures. In 24 instances the dairy employees also acted as nurses. In 10 instances the patients, while suffering from a mild attack or during the onset of the disease, continued their work; and those who are familiar with the personal habits of the average dairy hands will have no difficulty in surmising the manner of direct digital infection. In 1 instance the milk-tins were washed with the same dish-cloth used among the fever patients. In 2 instances dairy employees were connected with the night-soil service, and in another instance the milk had been kept in a closet in the sick-room.

Of the 99 epidemics of *scarlet fever* the disease prevailed in 68 instances either at the dairy or milk-farm. In 6 instances persons connected with the dairy either lodged in or had visited infected houses. In 2 instances the infection was conveyed by means of infected bottles or milk-cans left in scarlet fever houses. In 17 instances the infection was conveyed by persons connected with the milk business while suffering or recovering from the disease, and in at least 10 instances by persons who acted as nurses while handling the milk. In 3 instances the milk had been stored in or close by the sick-room. In 1 instance the cans had been wiped with an infected cloth. In 19 instances the infection was attributed to disease of the milch cows, such as puerperal fever and inflammation of the udder and teats; but these latter out-

breaks were probably not genuine scarlet fever, but a so-called streptococcus or staphylococcus infection, the symptoms of which closely resemble those of scarlet fever.

Of the 36 outbreaks of diphtheria tabulated, there is evidence that the disease prevailed at the dairy or farm in 13 instances. In 3 instances the employees continued to handle the milk while suffering themselves from the disease. In 12 instances the disease is attributed directly to the cows having inflammatory conditions of the teats and udders. These instances, however, may be regarded as typical examples of streptococcus and staphylococcus infection, giving rise to a form of follicular tonsillitis or pseudo-diphtheria, often difficult to distinguish clinically from true diphtheria or scarlet fever.

There is much reason for assuming that tuberculosis has been spread through the milk supply; and on pages 315–328, Report of the health officer of the district of Columbia, 1895, Dr. S. C. Busey and I have collected considerable clinical evidence on this subject, with the details of which I need not now burden you.

Apart from this, it has been demonstrated that milk is the most frequent cause of cholera infantum and the diarrhœal diseases in children, especially when such milk is produced under unclean conditions, which together with a high temperature favor rapid germ proliferation and the production of toxins. Milk may also be rendered unfit for use and cause sickness in children by reason of improper food of the animal, or while the animal is being treated with strong remedial agents, which may be excreted in the milk; and, finally, milk may be morbific as the product of a diseased animal. I have elsewhere pointed out that inflammatory conditions of the udder and teats, especially the conditions known as garget, are doubtless responsible for a large number of cases of pseudo-diphtheria and other septic infections. The milk of animals suffering from acute specific enteritis, puerperal and other septic fevers, foot-and-mouth disease, cow-pox, anthrax, pleuro-pneumonia, rabies, and tetanus, has also been known to produce sickness in the consumer.

A review of the milk legislation shows that the laws which have been enacted deal largely with the prevention of milk sophistication; and those who are familiar with the surroundings of our milk-farms and the habits of the average dairy employees need no argument for the necessity of sanitary reforms and additional

legislation upon this subject. Since it is doubtful, however, whether legislation in matters of this kind is ever as effective as public education, the establishment of sanitary dairies and creameries should be encouraged. Such institutions, in addition to official control, are subject to frequent unannounced inspections by members of voluntary milk commissions, and have doubtless a very useful future.

Butter as a Carrier of Disease.—Since milk is known to be a carrier of disease germs, under the conditions referred to, the possibility that butter may act in the same way has been considered; and the evidence on this subject is as follows: —

It has been shown by Hugo Laser[1] that, when cholera bacilli are implanted in butter, they remain alive and virulent for 32 days, and those of typhoid from three to four weeks. Gasperini found viable germs of tuberculosis in butter 128 days old; and V. A. Moore, chief of the division of animal pathology, in the Year-book of the United States Department of Agriculture for 1895, page 431, describes an experiment in his laboratory which shows that tubercle bacilli will remain virulent for more than 90 days. The guinea pig inoculated with a piece of this butter the size of a small pea died of tuberculosis 97 days after the infection.

Brusaferro in 1891 produced tuberculosis in a rabbit through the injection of butter made from the milk of a cow with a tuberculous udder.

Roth in 1894 got similar results, and found, moreover, that 2 out of 20 market samples of butter used by him yielded positive results. Schuchardt got negative results from 42 samples, while Obermüller[3] found the bacillus in every sample of Berlin butter used in his first experiments; and in his second series in 1899, when he used only the watery fluid of the butter obtained with the centrifuge, he found in 4 samples, of 10 from the same source as his first lot, evidence of the presence of genuine tubercle bacilli. Petri, one of the experts on food for the German Imperial Health Office, in 1898 found the genuine tubercle bacillus in 32.4 per cent., a bacillus resembling the tubercle bacillus in 37.2 per cent., while only 30.4 per cent. of the samples were free from either organism. Gröning, another expert, found the tubercle bacillus in 8 of 17 samples. Korn found them in 23.5 per cent. of the samples purchased at Freiburg, and Dr. C. Coggi in only 2 out of 100 samples purchased at Milan. Dr. Lydia Rabin-

owitsch,[4] in 80 samples of butter collected at Berlin and Philadelphia, found a bacillus resembling the tubercle bacillus in 28.7 per cent. of the samples.

We have no evidence that tuberculosis has ever been spread to man through the agency of butter. V. A. Moore states that Steyerthal and Konel have pointed out several cases of these diseases which were traced to the consumption of butter. Fröhner has shown that a disease of cattle in Europe, known as foot-and-mouth disease, and which is communicable to man, has been transmitted through butter made from the milk of cows affected with that malady. I have not been able to verify these statements, but we have evidence that the germs of tuberculosis may remain viable in butter for 128 days; and, as Dr. Moore justly remarks, although the number of reported cases of infectious diseases in which the contagion was introduced through butter is not large, it is enough to show the possibility of contracting disease by the consumption of this common article of food. These facts are of importance when we realize that the production of butter in the United States amounts to 1,500,000,000 pounds per annum, and that butter, like milk, is an almost universal article of food. The remedy is simple enough, and consists in the pasteurization of the cream and the addition of certain butter cultures in order to restore the original aroma.

Butter Substitutes.— In the face of such evidence it is not surprising that scientific men should have given considerable attention to the so-called butter substitutes, more familiarly known as butterin and oleomargarin.

In 1868 Mege Mouries, at the instigation of the French government, undertook experiments for the purpose of securing a substitute for butter at a less cost, and which might be used by the navy and the wage-earners of France. This original process, according to Dr. E. A. de Schweinitz, of the Biochemic Laboratory, Bureau of Animal Industry, Department of Agriculture, Year-book for 1895, was patented in the United States in 1873.

According to Mr. Miller, manager of the butterin department of one of the packing companies of Kansas City, their product consists of oleo oil, neutral lard, butter, cream, milk, and salt. Highly refined cotton-seed oil is sometimes used in limited quantities in the cheapest grades. Oleo oil is made from caul fat, the richest and choicest fat of the beef. This fat amounts to about 40 pounds

to the animal. It is taken out before the animal is skinned, thoroughly washed, and thrown into a vat of ice-water to stand until the following day. Then it is cut up fine and cooked. The fat is cooked and placed in linen cloths, and the oil is extracted in a hydraulic press. The residue in the cloths, after pressing it, is commercially known as stearin. The tallow element is therefore effectually removed. Neutral lard is obtained from the leaf lard of the pig. The leaf, amounting to about 5 or 6 pounds to the pig, is taken out as soon as the animal is killed, thoroughly washed, and put into a freezer for 24 hours. It is then cut into shreds and cooked, and after straining becomes snowy white. Both pigs and cattle are examined by government inspectors before and after killing, so that diseased animals are excluded.

Oleo and neutral lard, therefore, are the basis of the so-called oleomargarin or butterin. These are churned with cream or milk, salted and colored with annatto, or butter-color, run through cold water, worked in a butter-worker, and placed in suitable packages and labelled, according to the United States laws, "Oleomargarin."

According to a report of the Commissioner of Internal Revenue, May 14, 1900, the following are the percentages of ingredients used in the production of oleomargarin in the United States for the fiscal year ending June 30, 1899: —

	Per cent.		Per cent.
Neutral lard	34.37	Stearin	.07
Oleo oil	26.82	Glucose	.03
Cotton-seed oil	4.77	Milk	15.55
Sesame	.53	Salt	7.42
Coloring matter	.16	Butter oil	1.76
Sugar	.12	Butter	1.72
Glycerin	.01	Cream	3.86

Those who are familiar with the manufacture of oleo oil, neutral lard, and the process of making oleomargarin cannot fail to have been impressed with the fact that nothing but the most wholesome and pure fats are used, and that the most scrupulous precautions as regards cleanliness are observed in the manipulations. This extends not only to the material, the utensils, and the workrooms, but also to the person and clothing of the employees; and I can cheerfully corroborate the testimony of Dr. Ames, of the United States Navy, when he declared before the Senate committee (pp.

348–350) that the manufacture of butterin, in properly constructed factories, is much cleaner than the manufacture of butter, and that he has found the factories of Kansas City nearly perfect in that respect. It should be more generally used, and not looked upon as an inferior article and makeshift for butter, when it is really superior.

CHEMIC COMPOSITION OF BUTTER AND OLEOMARGARIN.

	Fat.	Casein.	Sugar.	Salt.	Water.
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Butter	81.36	1.95	1	5.41	11.27
Oleomargarin	84.76	.74	—	5.49	9.01

The great distinction between butter fat and margarin fat lies in the fact that butter fat contains nearly 8 per cent. of the volatile fats, while the margarin has about 1-2 per cent. In the analysis of these substances this difference is made use of.

Wholesomeness and Digestibility of Oleomargarin.— Uffelmann, professor of hygiene, as early as 1890 reported that butterin is nearly as digestible as butter, fully 96 per cent. being utilized; and, after quoting the experiments on this point of Sell, a food expert of the German Health Office, declared that no objections should be urged against its use so long as it is properly prepared from wholesome fats and sold under its real name.

Professor H. W. Wiley, chief chemist of the United States Department of Agriculture, testified before the Senate Committee on Manufactures on adulteration of food products (pp. 14–16) that from a nutritive point of view all the fats and oils used as food have nearly the same value as heat producers. Butter fat has a heat value of a little more than 9,000 calories per gram, while the beef fat of oleomargarin has a slightly higher heat value; but the butter fat is a little more easy of digestion, so that there is practically no difference in the value of the two fats in the human economy. Cotton-seed oil has practically the same heat value as oleomargarin, and is probably a little easier of digestion. Dr. Wiley considers mixtures of animal fats and vegetable oils to be perfectly wholesome, but objects to the payment of fancy prices by persons in straightened circumstances who suppose they are getting butter when they are not.

Comparative Digestibility of Butter and Oleomargarin.— The most valuable experiments as to the relative digestibility of butter and oleomargarin were made by Adolph Mayer[5] in 1883, N. Kienzel[6] in 1898, and, H. Lühring,[7] with the following results: —

	A. Mayer.	N. Kienzel.	H. Lühring.	Average of all experiments.
Digestibility of:	Per cent.	Per cent.	Per cent.	Per cent.
Butter . . .	98.40–97.10	96.65	95.69	96.96
Oleomargarin	96.40–95.80	95.64–95.72	96.98–96.70–96.93	96.27

From these feeding experiments it would appear that, while 97 per cent. of the natural butter is digested, the digestibility of the artificial product is only about 0.7 per cent. less. In other words, the two are practically alike in point of digestibility.

Professor Jolles, in a report to the Imperial Academy of Sciences in Vienna, March, 1894, arrived at a similar conclusion. Hultgren and Lundergren, the Swedish physiologists, and Wibbens and Huizenga, from the Physiological Institute of Berlin, offer similar testimony. The last-named authors conclude their article in *Archiv für die gesammte Physiologie*, lxxxiii., February, 1901, page 609, by saying, "Everybody has to cut his coat according to the cloth, and it is therefore a great blessing for all mankind that those who have to deny themselves the regular use of natural butter will find in artificial butter a wholesome and cheap substitute."

Oleomargarin as a Carrier of Disease.— I have carefully searched the annals of medical literature for opinions opposed to the above formidable testimony, and find that Morgenroth[8] has subjected oleomargarin to an investigation for the presence of tubercle bacilli, since milk is used in its manufacture, and found these organisms in 9 out of 20 samples. Dr. de Schweinitz, in the paper already quoted, expresses the belief that the germs of tuberculosis can be transmitted in oleomargarin, and bases this conclusion upon a number of inoculation experiments upon guinea pigs with different samples of oleomargarin, and refers to five infections. He does not give the total number of experiments, but says: "A number of other guinea pigs have been inoculated with different samples of oleomargarin, but at this

writing (after eight months) have not contracted disease from the oleomargarin inoculation. Two of the samples which caused disease in the animals were made at a factory where the material used may have been questionable in character."

On the whole, it is surprising that the evidence is not stronger, against this food product, which has doubtless been subjected to the most rigid sanitary investigation by scientists and food experts, and who, on account of a general prejudice against all artificial products, would not hesitate to record adverse opinions. Government inspection already extends to pigs and cattle before and after killing; and, if the officers perform their duty, and all the ingredients, including the milk, are pasteurized, as I believe they now are in the manufacture of butterin, the possibility of transmitting infectious diseases in this food product is certainly less than with genuine butter, unless made with pasteurized cream.

As a teacher of hygiene, I have urged upon my students for years to bring the merits and nutritive value of this foodstuff to the attention of the public, and in the interest of the wage-earners of this country to correct, as far as possible, the prejudice which has been created against the use of this product, provided always it is sold under its true name and at its real value. In this opinion I am glad to be supported by the highest scientific authorities in this country and abroad. Professor Schweitzer, of the Missouri State University, in his testimony before the Senate committee, states that careful physiologic experiments reveal no difference whatever in palatability and digestibility between butter and the brand of butterin which he has examined. Professor Barker, of the University of Pennsylvania, considers butterin quite as valuable a nutritive agent as butter. Professor Jonhson of Yale University says that for all the ordinary and culinary purposes it is the full equivalent of good butter made from cream, and regards the manufacture of oleomargarin as a legitimate and beneficent industry. Professor J. S. W. Arnold, of the medical department, University of New York, characterizes it as "a blessing for the public, and in every way a perfectly pure, wholesome, and palatable article of food." Henry Morton Stevens, Institute of Technology, New Jersey; J. C. Caldwell, of the Chemic Laboratory, Cornell University; Henry A. Mott, of New York; W. O. Atwater, Wesleyan University, Connecticut,— have all offered similar testimony.

It is a matter of special satisfaction to note that Coplin and Bevan, in their "Manual of Practical Hygiene," Philadelphia, 1892, and Professor Harrington, of Harvard, in his "Manual of Practical Hygiene," 1901, devote several pages to the consideration of this subject and the misrepresentation concerning butter substitutes.

Owing to the fraudulent sale for butter, oleomargarin and butterin have been subject to a vast amount of restrictive legislation; and yet, after all that has been said or done, the most effective remedy lies in the education of the public, who, if they desire these products, should not hesitate to ask for them by their proper name, and thus avoid deception.

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DISCUSSION.

A GENTLEMAN.— Last winter a public lecturer remarked that Washington is the sickliest city in the country. I should be very much pleased if the speaker would give us some information on that point. A great number of old people die here,— a very large percentage.

Dr. W. C. WOODWARD.— I stated in the paper that it was the interpretation of vital statistics, and not the compilation of them, that caused trouble. I fear very much that the lecturer referred to may have fallen into error in the interpretation of vital statistics. The laity generally accept the death-rate of a community as an index to its healthfulness. The death-rate, for instance, of the city of Washington being approximately 21 per thousand per annum, and the death-rate, for instance, of the city of Chicago being alleged to be about 14 per thousand per annum, the public will jump to the conclusion that Washington is nearly 50 per cent. less healthy than the city of Chicago. Persons who interpret death-rates in that way ignore some very essential factors. There are many items that have to do with the occurrence of death other than the salubrity of the city. Take, for instance, the city of Chicago, a city which has had a very great increase in population in the last ten years, and analyze its population, and you would find undoubtedly that there was a much larger percentage of that population between twenty and forty years of age than there was in the city of Washington. The enormous increase in these rapidly growing cities is due, of course, not to what we know as the natural increment, not to the increment by means of births, but to the increase due to immigra-

tion. On that account the large part of the population is at a very resisting period of its life, and in that way the death-rate is diminished.

There is another error in death-rates; and that is, that the people fail to realize differences in the population,— in the census, in the enumeration. Where a death-rate is based on figures furnished by a city, we have to regard very closely the method by which the population is enumerated. There are two ways, of course, of decreasing a death-rate. One method resorted to by certain cities is by discarding certain deaths. They claim that these deaths are not due to any local cause, but that the people have been in the city a short time, and therefore should not be charged to the city. If they do not do that, they will make a high estimate of the population, and thus reduce the death-rate. So that generally death-rates *per se* are not satisfactory indices to the sanitary condition of any community. I think there is no foundation for the statement that Washington is any less healthy than ordinary cities. The death-rate of Washington will compare favorably with the death-rates of New York, Philadelphia, Baltimore, and Boston; but, when you go to the West, when you find the cities that are made up largely of immigrants from other parts of the country, you will find ordinarily low death-rates, due either to the presence of a large number of very resistant young people in the community or to the ascendency of the Westerner's exaggerated idea of his city.

Dr. STERNBERG.— If I may be permitted to say a word on Dr. Kober's paper, I hope, if any of you have come here with a prejudice against oleomargarin or butterin products, that it has been removed by this able address. And I simply want to say a word in favor of butter. The fact that tubercle bacilli are found in samples of butter, and in a large proportion of the samples examined, cannot be ignored; but, if you draw the inference from this that butter is extremely dangerous, I think you make a mistake. The tubercle bacilli do not multiply in butter, and the number that might be present would be small; and we know that man in civilized countries, where tuberculosis prevails most, takes tubercle bacilli in different ways into his digestive tract. The great danger, of course, is in having the tubercle bacilli located in the lungs, which are the most vulnerable point. Fortunately, not all persons are equally susceptible. Probably none of us have ever escaped having living tubercle bacilli in our lungs. Consumptive patients go about on ferry boats, in railway cars, and in public places. They expectorate. The expectoration becomes desiccated,— this is not a pleasant subject, but we must present the facts,— and in the form of dust tubercle bacilli from such material do find their way into the lungs of the majority of people in thickly populated regions. Out on the plains and in the mountains of Arizona and New Mexico — in places where you have bright sunshine and dry air — they quickly disappear. Fortunately, sunshine will destroy these bacilli, and quite promptly; but, as I said before, we are not all equally susceptible, and a large proportion of the human race escape this danger. When a few tubercle bacilli find their way with food into the stomach, we know from experience that any infection resulting from that must be extremely rare. I do not know that the reader suggested that we have any definite evidence that anybody had been directly infected in that way: certainly, there would be greater danger of infection by milk, which contains a great number of germs; but from my point of view the danger of infection is so

slight that it is not necessary to give up the use of butter. It is desirable, though, that we should all join in every effort to reform the methods at the dairies, and, where you have diseased cows, put them out of commission, and see that these dairy products are protected in every possible way.

Prof. GEORGE L. RAYMOND.— I would like to ask the relative degree in which typhoid fever and scarlet fever are communicated through oleomargarin and through butter.

Prof. KOBER.— Replying to the professor, I would say that there is practically no evidence whatever that scarlet fever and typhoid fever have been transmitted either in butter or in oleomargarin. The evidence points altogether to the transmission by milk; and, as has been very well pointed out by Dr. Sternberg, milk of course contains a larger quantity of germs, as a rule. It is also a suitable medium for the proliferation of the germs, so that, if we have germs originally present in milk, and if the temperature favors their proliferation, we find in milk a suitable soil for their growth and development; and, of course, the danger of infection is very much greater, because, if it were not for the proliferation of these germs in the milk, the few germs that would naturally be taken in the stomach would probably never cause infection, even in typhoid fever. But it is a question of their numbers. It is the undue proliferation of the germ that in all probability causes the infection. If they were limited in number, the digestive organs would undoubtedly destroy the organisms. That is one reason why the cases of infection of tuberculosis from butter are very few. It is true that Dr. Moore refers to one or two cases where the evidence pointed rather clearly that tuberculosis was transmitted by means of butter. I have not been able to verify his references, and therefore cannot speak positively. As Dr. Sternberg has very properly pointed out, there is really little or no danger of being infected with tuberculosis from the use of butter; but, of course, if that is true of butter, it is equally true of oleomargarin. Heretofore oleomargarin has largely been assailed on the ground of its unwholesomeness. Whatever evidence as to the unwholesome character of oleomargarin exists has been presented; and, if the danger is slight as regards tubercular infection from butter, it is equally slight — perhaps even less so — from oleomargarin, because the products used are practically pasteurized before being turned into oleomargarin.

Mr. GEORGE HERBERT BEAMAN, of Washington.— I have taken a great interest in the discussion before Congress about the manufacture of what they call butter. It is stated that the farmer is entitled to the trade in what has been called butter. The shrewdest men in Congress claim that the farmers for hundreds of years have been producing what they call butter. Now, if these other people can produce something else, as the gentleman to-day maintained, that is equally as pure as or more pure than butter, then he has established a strong point for the manufacture of what is called butterin, or imitation of butter. If it can be established that the public can use this butterin manufactured from the beef or from the hog as safely as it can butter, then the government of the United States has no right to tax that article with the idea of forcing the people out of business. If I understand the arguments that have been made, the only power that Congress possesses is to tax this butterin, this oleomargarin, because it is hurtful to the trade of

genuine butter. I hope this paper will be published. I think it is going to meet all the arguments made on the other side, and that it will have great influence on future legislation in this country.

A GENTLEMAN.— If I understand the argument in Congress referred to, it took the ground that, if it was merely for revenue, the government had the right constitutionally to tax anything; but, if it was on the ground of killing off this oleomargarin industry, then it was unwise legislation.

Dr. C. A. CRAMPTON.—This is a subject which has occupied the attention of Congress very much this winter; and I am glad to see it discussed in this Association, especially from a point of view that is little considered in the ordinary line of discussion. The only point that I would take exception to, probably, in Dr. Kober's paper is in reference to the composition of butter and oleomargarin. I think, perhaps, he did not lay sufficient significance on butter. The doctor says that, while its general composition is very close to that of oleomargarin and that of the fats in general, butter contains from 5 to 7 per cent. of the glycerides of soluble fatty acids which go to compose its aroma and which segregate it from most other fats. The question of the digestibility of these glycerides cannot be greatly different from those which are contained in the components of oleomargarine. They have a great influence upon the character of the material, however, and also probably upon its digestibility, because these glycerides constitute the flavor of butter; and they are contained to a very slight extent in either oleo oil or in neutral lard or cotton-seed oil,— the ingredients of oleomargarin,— so that it is necessary, in manufacturing oleomargarin, to incorporate these glycerides into the oleomargarin in order to make it taste or smell at all like butter. Otherwise oleomargarin would not be an imitation or substitute for butter; no one would buy it for butter. Consequently, this is an important fact which should not be put entirely aside.

With the rest of the matter — as to the cleanliness of the product and its digestibility in general, although that is a question which is not so easily determined — I fully concur in what the speaker has said. I think all scientific men and the strongest opponents of oleomargarin themselves have about laid down their arms on that subject.

One point that has occurred to me in this discussion is this: I have been connected with the prosecutions under the law for a number of years, and the difficulty that we have always found in the matter is the inertia of the public with reference to the necessity of the sale of this product under its proper name and its true character. It is almost impossible to send a man to the penitentiary for selling oleomargarin as butter. The prosecutions that have been successfully carried out have been rather in the line of punishment for frauds upon the revenue: the main frauds have been of that nature; that is to say, the man who has sold oleomargarin for butter has at the same time violated the revenue law,— has not paid his proper license or has failed to put the stamp on the packages or something of that sort,— and I do not know that we would have ever had a successful prosecution of any one purely for selling oleomargarin for butter without putting upon the retail package the necessary legend which shall describe it as oleomargarin. Therefore, it is necessary and it is essential for the proper enforcement of this law, as well as

for other laws of the character of food adulteration laws, that the public should be educated up to the necessity of demanding that honesty shall rule in their food supplies and that the products they buy shall be sold under their true character. This was set forth by me several years ago in an article in the *Independent* with reference to obtaining food adulteration legislation. We have in the Internal Revenue Office several laws which are really food adulteration laws, although they are known under the title of revenue laws, but several of them have for their real object the regulation of the character of articles which are adulterated; and the difficulty we encounter in enforcing these laws is the lack of interest among the people in this regard.

Prof. HARVEY W. WILEY.— I am not a member of this Association, but I was invited by Dr. Kober to be present this morning, and I have listened with great pleasure to his paper. It brings up a subject which is of prime importance in this country, and that is the extent of commercial fraud. It seems to me that the commerce of this country is undergoing a state of demoralization in the fact that attempts are made systematically to defraud consumers. I am speaking now particularly of commerce in food, but the same remarks apply to all kinds of commerce; and such a hold has this process taken on the community that it is simply almost ineradicable. I have heard in the last two months reputable business men deny the right of Congress to interfere with this practice.

I am on both sides of the oleomargarine question, and have always been. I believe that every human being has a right to eat and drink what he pleases. I take the stand that we are individuals, and not herds, and that an ordinary, intelligent man is able to take care of himself, and that the government does not need to take care of him in any way. We have a right to eat anything we please; and, if it hurts us, we are the guilty parties. For instance, I like coppered peas; and eating them is one of the privileges which has not yet been denied by Congress. In this town only a short time ago I sent to a grocery store for French green peas, and I was sent a can, beautifully labelled in French, which was supposed to contain the article which I wanted; but, on opening it, I was defrauded, because it contained no copper, and the peas were yellow. If I want coppered peas, it is contrary to the spirit of the laws of this country to prevent me from getting them. The question as to what is injurious to health is a matter which I do not believe can be determined by legislation. If you are going to exclude from food products everything which is injurious to health, we shall all starve to death. There is not a single object of food that has not killed its thousands of victims, and therefore, the attempt to protect the public health by this restrictive legislation is absolutely destined to failure. What the public wants is honesty; and our physicians and our hygienists will be able to tell us, if we know what a substance is, whether it is likely to hurt us. And so I take that ground in regard to oleomargarin. I do not believe that oleomargarin is injurious to health when it is properly made. We assume that butter is properly made, even though it does contain these germs; and, if we are going to kill all the germs in the world, we shall all die very soon, because our lives are dependent upon germ lives absolutely. I am a defender of the germ. I believe in him thoroughly; and, if you are going to exterminate nine hundred and ninety-nine good men to kill one bad one, that is what you do

when you kill germs. We have got to take these risks unless we would live forever. That would be a great misfortune: we who are in the civil service, at least, would never be retired. So, I say, the public wants to know what it is eating. It is not for Congress to prescribe what it shall eat, simply let the laws prescribe the means of knowing what we are eating, and not what we can eat; and let every man judge for himself in regard to this matter. So, I say, I am on both sides of the oleomargarin question. I believe that it should be unrestricted in its manufacture, and the man who sells it as butter ought to go to the penitentiary. That is the place for him, because it is a fraud,— it is obtaining money under false pretences.

Now what is the best way to stop this fraud? That is another question, and I do not care to take that subject up at all. Congress so far has seen fit to tax these adulterated foods. That may be a very good way, but at the same time we are raising the price of wholesome articles of food; and I do not believe taxation is going to do much. We ought to make our foods as cheap as possible, especially when beef is so high that the cow has literally jumped over the moon, and it is almost impossible for us poor people to eat meat. If we can get good oleomargarin for twenty or twenty-five cents a pound, and it is just as wholesome as good butter at a higher price we should have the right to it. I do not prefer oleomargarin; I would rather eat good butter than good oleomargarin; and, as long as I have the price, I am going to have butter. But I do not want to force my friend to pay a high price if he wants to pay a low price, and Congress has no right to tax an article to prevent him from doing it. I would get at the man who defrauded me in some way, and what we want, as Mr. Crampton has said, is an education of the public, so that public opinion will support a law which will prevent fraud in foods; and, if this Association can aid in educating the public mind up to this point, it will help to solve the whole difficulty which now attends legislation of this kind. A broad food law, requiring honesty in commerce in foods, is what we want. I do not even want it to prevent food adulteration: I want a law which will prevent the misbranding or the misnaming of foods. I do not care anything about these adulterations. Some of them may be wholesome, and some of them may not be; and that is a question of a different kind. What I want is simple honesty; and, when I send to the store for coppered peas, I do not want the yellow variety under a label which leads me to believe they are coppered. If I want to eat coppered peas, I want them, and, if I want to eat pure foods, I want them; and that is all I ask the law to do for me. I believe that is all any intelligent individual ought to have done for him.

Dr. KOBER.— Professor Wiley and Mr. Crampton have already answered all the important questions as to the motive of this taxation proposed in recent legislation, which is undoubtedly to prevent the sale of oleomargarin for butter. It is believed that taxing it and putting a revenue stamp upon it would prevent its fraudulent sale. The recent law does not contemplate the taxing of oleomargarin in its natural color, which is white; and, therefore, the people who sell oleomargarin in its natural color will not have to put a revenue stamp upon it and pay the tax. The only objection to that proposition would come naturally from the poor man, who is sensitive on matters of that kind. The moment he eats his oleomargarin in its uncolored state he

at once proclaims to the world his poverty to buy genuine butter. In many respects he has just as good a right to have his oleomargarin colored as his neighbor has to have his butter colored, because, as a matter of fact, butter is really white for nine or ten months of the year. Its yellow color all the year around is entirely due to the addition of some coloring matter by which the dairyman gives it a uniform color. This habit is so extensive in the United States that people would hardly think of eating white butter; but in England, Germany, and France the people would not think of eating yellow butter. They much prefer the natural product, which is really nearly white for nine or ten months in the year; and the natural yellow color comes in having grass-fed animals. The poor man's complaint is that you compel him to eat his oleomargarin in an uncolored condition, and therefore he proclaims to the world his poverty to eat genuine butter. That can only be overcome by education; and it has been well pointed out that education is an important factor, not only in this, but in all other questions that relate to food. If the food consumer will boldly ask for what he wants, if he will ask for oleomargarin, he is not like to receive butter; but he is very apt to receive oleomargarin. If you can educate a man up to the point of asking for what he really expects to pay for, there can be no opportunity for deception.

Professor Crampton's criticism as to the percentage of soluble fatty acids in butter is correct. I referred to this difference between butter fat and oleomargerin in my paper, but I did not read it, as these matters are purely technical.

As to the point made by one gentleman in regard to the views of Dr. Koch at a recent medical congress,—that bovine tuberculosis is not communicable to men,—I will say that that belief is not shared by even a respectable number of medical men or sanitarians. We cannot ignore the clinical evidence on the subject by any means. Dr. Sternberg has pointed out that there is a certain degree of danger of transmission of bovine tuberculosis in milk. Now we know that there is considerable danger in milk when used by infants, because, as a matter of fact, there is an undue prevelance of the slower forms of tuberculosis which affect especially the lymphatic glands and the intestines, and which can only be traced to the consumption of raw milk. Even as early as 1846 Professor Klencke found a number of tuberculous children that had been fed on raw milk. He investigated the milk supply, and found that the milk was from tuberculous cows. He had these animals slaughtered and found tuberculous lesions; the sixteen cases occurring in infants, nearly all developed tubercular lesions of the abdominal organs, clearly showing the cause and effect. Evidence of that kind has been multiplied over and over again, and I have made quite a collection of such cases in the article referred to and published in the health officer's report for 1895. Again, it has been shown that tuberculosis in cows may be communicated through infection to the hands of the dairymaids. Quite a number of instances are on record and have been quoted by Professor Salmon, of the Bureau of Animal Industry, who is a conservative authority, showing tubercular infection conveyed from the animal to men through wound surfaces. So, I think, the majority do not agree with Professor Koch's dictum on the subject. There is no doubt, however, that the forms of consumption which are produced

through the milk supply are of a more chronic and slower type, manifesting themselves in the character of what was formerly spoken of as a scrofulous affection. Up to within a few years scrofula was regarded a distinct disease from consumption or pulmonary tuberculosis; but we now know that scrofula is really nothing more nor less than a slower and more chronic form of tuberculosis, affecting the skin, lymphatic glands and bones rather than the lungs. It is not at all unlikely that these cases of so-called scrofula are caused by the introduction of the germs into the stomach,— and the action of the gastric juice may so modify their virulence as to give rise to the slower and more chronic forms. Further, it has been observed that, when animals are fed on tuberculous milk subjected to temperatures not sufficient to kill the germs, but to modify their virulence, the resulting inoculations were slower and of a less virulent type. That is, as far as I know, the present status of the question.

3. INFECTION AND DISINFECTION.

BY GENERAL GEORGE M. STERNBERG, M.D., LL.D., SURGEON-GENERAL, UNITED STATES ARMY.

[Read Thursday evening, April 24.]

Much confusion exists in the popular use of the term "infection." By many it is supposed to be synonymous with contagion; but this is not in accordance with the established usage among well-informed physicians. It is a far more comprehensive term; for, while all contagious diseases are infectious, not all infectious diseases are contagious. A contagious disease is one which may be transmitted by personal contact, as, for example, small-pox, measles, scarlet fever, etc. But, while all of these are also infectious diseases, there are others, such as the malarial fevers, yellow fever, trichinosis, etc., which are infectious, but not contagious, and still others, such as cholera, typhoid fever, and dysentery, which are only transmitted by personal contact under very exceptional circumstances. The word "infection," from the Latin verb *inficio*, means literally to put or dip into anything; but in its accepted technical sense the putting of non-living particles into a living body does not constitute infection. A man who receives a load of bird-shot in the muscles of his thigh is not infected with bird-shot or with lead. But, when a living micro-organism is introduced into the body of a living animal and multiplies there, the animal is infected. This infection may be localized, as in the case of a carbuncle, an abscess, a pneumonia, a pleurisy, etc., or it may be a general blood infection, as in relapsing fever, yellow fever, or the malarial fevers. In cholera and dysentery the infectious agent is in the alimentary canal, and penetrates to a greater or less extent the mucous membrane of the intestine. In typhoid fever it invades the glands of the intestine and mesentery and the spleen. In diphtheria the mucous membrane of the throat and posterior nares is the usual seat of the infection. Certain infectious diseases have their seat in various favorite localities upon the external portion of the body. These are the infectious skin diseases, which are also contagious for

evident reasons. The fact that the infecting parasite must penetrate the body of its living host is well illustrated by the infectious skin disease known popularly as "itch" (scabies). The itch insect deposits its ova and rears its family in burrows beneath the epidermis, and thus becomes the etiological agent in the production of an infectious skin disease. Certain other parasites, known as pediculi, *infest* the surface of the body, especially in localities covered with hair. As these do not penetrate the skin, their presence does not constitute an infection.

The object of disinfection is to prevent the extension of infectious diseases by destroying the specific infectious material which gives rise to them. This is accomplished by the use of disinfectants.

There can be no partial disinfection of such material. Either its infecting power is destroyed or it is not. In the latter case there is a failure to disinfect. Nor can there be any disinfection in the absence of infectious material.

Popularly, the term "disinfection" is used in a much broader sense. Any chemical agent which destroys or masks bad odors or which arrests putrefactive decomposition is spoken of as a disinfectant. And in the absence of any infectious disease it is common to speak of disinfecting a foul cesspool, or a bad-smelling stable, or a privy vault.

This popular use of the term has led to much misapprehension; and the agents which have been found to destroy bad odors,— deodorizers,— or to arrest putrefactive decomposition,— antiseptics, — have been confidently recommended and extensively used for the destruction of disease germs in the excreta of patients with cholera, typhoid fever, etc.

The injurious consequences which are likely to result from such misapprehension and misuse of the word "disinfectant" will be appreciated when it is known that it has been demonstrated that many of the agents which have been found useful as deodorizers or as antiseptics are entirely without value for the destruction of disease germs.

This is true, for example, as regards the sulphate of iron or copperas, a salt which has been extensively used with the idea tha it is a valuable disinfectant. As a matter of fact, sulphate of iron in saturated solution does not destroy the vitality of disease germs or the infecting power of material containing them. This salt is,

nevertheless, a very valuable antiseptic; and its low price makes it one of the most available agents for the arrest of putrefactive decomposition in privy vaults, etc.

Antiseptic agents also exercise a restraining influence upon the development of these germs, and their use during epidemics is to be recommended when masses of organic material in the vicinity of human habitations cannot be completely destroyed or removed or disinfected.

While an antiseptic agent is not necessarily a disinfectant, all disinfectants are antiseptics; for putrefactive decomposition is due to the development of "germs" of the same class as that to which disease germs belong, and the agents which destroy the latter also destroy the bacteria of putrefaction, when brought in contact with them in sufficient quantity, or restrain their development when present in smaller amounts.

A large number of the proprietary "disinfectants," so called, which are in the market, are simply deodorizers or antiseptics of greater or less value, and are entirely untrustworthy for disinfecting purposes.

The offensive gases given off from decomposing organic material are no doubt injurious to health; and the same is true, even to a greater extent, of the more complex products known as *ptomaines*, which are a product of the vital — physiological — processes attending the growth of the bacteria of putrefaction and allied organisms. It is therefore desirable that these products should be destroyed; and, as a matter of fact, they are neutralized by some of the agents which we recognize as disinfectants, in accordance with the strict definition of the term. But they are also neutralized by other agents — deodorants — which cannot be relied upon for disinfecting purposes, and by disinfectants, properly so called, in amounts inadequate for the accomplishment of disinfection. Their formation may also be prevented by the use of *antiseptics*. From our point of view the destruction of sulphuretted hydrogen, of ammonia, or even of the more poisonous ptomaines, in a privy vault, is no more disinfection than is the chemical decomposition of the same substances in a chemist's laboratory. The same is true as regards all of the bad-smelling and little known products of decomposition. None of these are "infectious material," in the sense in which we use these words; that is, they do not, so far as we know, give rise *directly* to any infectious disease. Indirectly,

they are concerned in the extension of the epidemic "filth diseases," such as cholera, bubonic plague, and typhoid fever. This because persons exposed to the foul emanations from sewers, privy vaults, and other receptacles of filth, have their vital resisting power lowered by the continued respiration of an atmosphere contaminated with these poisonous gases, and are liable to become the victims of any infectious disease to which they may be exposed. Moreover, the accumulations of filth which give off these offensive gases furnish pabulum upon which certain disease germs thrive; and it may happen that the bad-smelling air carries something worse than the poisonous gas which makes its presence known by offending the sense of smell. It may waft to our nostrils infectious particles which are beyond recognition by any sense, unless it be the sense of sight with the aid of a good microscope.

Tests of Disinfection.— What means have we of proving that the infective power of infectious material has been destroyed?

Evidence of disinfection may be obtained: (*a*) from the practical experiments — experience — of those engaged in sanitary work; (*b*) by inoculation experiments upon susceptible animals; (*c*) by experiments made directly upon known disease germs.

(*a*) It is a matter of common experience that, when a room has been occupied by a patient with an infectious disease, such as small-pox, scarlet fever, or diphtheria, susceptible persons are liable to contract the disease weeks or even months after the patient has been removed from it, unless in the mean time it has been disinfected. If a second case does occur from exposure in such a room, it is evident that it has not been disinfected. But the non-occurrence of subsequent cases cannot always be taken as evidence that the means of disinfection resorted to were efficient. Negative evidence should be received with great caution. In the first place the question as to whether susceptible individuals have been fairly exposed in the disinfected room must be considered. Then it must be remembered that susceptible persons do not always contract a disease, even when they are exposed in a locality known to be infected. A further difficulty in estimating the value of evidence obtained in practice arises from the fact that in connection with the special means of disinfection resorted to, such as fumigation, hanging up cloths saturated with a disinfecting solution, etc., it is customary to resort to additional precautionary measures, such as washing surfaces with soap and hot water,

whitewashing plastered walls, and free ventilation. It is apparent that under these circumstances it would be unsafe to accept the fact that no other cases occurred in a room treated in this way as evidence that the particular disinfectant used is efficient for the destruction of the infectious agent of the disease in question. The fond mother who attaches a charm to her child's neck to protect it from evil also takes the precaution of guarding it from contact with other children who are sick with any infectious disease. If her child fortunately grows to manhood or womanhood without having suffered an attack of scarlet fever or diphtheria, she may imagine that her charm has protected it; but the evidence upon which her faith is founded is not of a nature to convince those who are familiar with scientific methods of demonstration. "Well-educated" persons are often ready to testify in favor of methods of disinfection or of treatment upon evidence which, from a scientific point of view, has no more value than that which the fond mother in question has to offer in favor of the little bag containing camphor or assafœtida, or some other charm of equal value which she has attached to her child's neck to keep it from catching scarlet fever or diphtheria at school. On a par with these charms, so far as disinfection is concerned, we may place the saucer of chloride of lime, which it was formerly the fashion to place under the bed of a patient sick with an infectious disease, the rag saturated with carbolic acid or chloride of zinc, suspended in the sick-room, and even the fumigations with burning sulphur, as sometimes practised by those who are unfamiliar with the evidence as to the exact value of this agent, and the conditions necessary to insure successful disinfection with it.

Chloride of lime, sulphurous acid gas, and carbolic acid are among our most useful disinfecting agents; but disease germs are not apt to be charmed away by them any more than by a little bag of camphor.

Having pointed out the fact that negative evidence, in a restricted field of observation, must be accepted with great caution in estimating the value of disinfectants, we hasten to say that the combined experience of sanitarians, derived from practical efforts to restrict the extension of infectious diseases, is of the greatest value, and that this experience is, to a great extent, in accord with the results of exact experiments made in the laboratory.

(*b*) Inoculation experiments upon susceptible animals, made

directly with infectious material which has been subjected to the action of a disinfectant, have been made by numerous observers. The proof of disinfection in this case is failure to produce the characteristic symptoms which result from inoculation with similar material not disinfected.

(*c*) As already stated, it has been demonstrated that the infectious diseases of the lower animals, which have furnished the material for experiments upon disinfectants by the method of inoculation, are "germ diseases," and that the infectious agent is in each case a living micro-organism, belonging to the class known under the general name of *Bacteria*. The bacteria are vegetable organisms, which, by reason of their minute size and simple organization, must be placed at the very foot of the scale of living things. But they make up in number and in rapidity of development for their minute size; and there is good reason for believing that the infectious diseases of man are also caused by pathogenic — disease-producing — organisms of the same class. Indeed, this has already been proved for many of these diseases.

Many of these disease germs are now known to us, not only by microscopic examination of the blood and tissues of infected animals, but also by "culture experiments." That is, we are able to cultivate them artificially in suitable media, and to study their mode of development, etc., in the laboratory, quite independently of the animals from which our "pure cultures" were obtained in the first instance. The culture fluids used are prepared from the flesh of various animals; and when to one of these a certain quantity of gelatine is added we have a "solid culture medium," upon the surface of which some of these germs will grow most luxuriantly. To start such a "culture," it is only necessary to transfer, with proper precautions, a minute quantity of the infectious material to the surface of our culture medium, or into a fluid which has been found to be suitable for the growth of the particular organism which we desire to cultivate. A second culture is in the same way started from the first, and so on indefinitely.

Now it is evident that these "pure cultures" furnish us a ready means for testing the power of various chemical agents to destroy the vitality of known disease germs, as shown by their failure to grow in a suitable culture medium after exposure for a given time to a given percentage of the disinfectant. Very many experiments of this nature have been made. We may say here that the ex-

perimental data on record indicate that those agents which are efficient for the destruction of any one of the pathogenic organisms upon which experiments have been made, or of harmless species of the same class,— *e.g.*, the bacteria of putrefaction,— are efficient for the destruction of all, *in the absence of spores*. There is, it is true, within certain limits, a difference in the resisting power of organisms of this class to chemical agents. This is not, however, sufficiently marked to prevent the general statement that a *disinfectant for one is a disinfectant for all, in the absence of spores*.

The last clause of the above statement calls for an explanation, and certain details with reference to the mode of reproduction of disease germs. All of the bacteria multiply by binary division; that is, one individual divides into two, and each member of the pair again into two, and so on. The spherical bacteria, known as *micrococci*, multiply only in this way; but some of the rod-shaped bacteria, or *bacilli*, also form spores. These spores correspond with the seeds of higher plants. They are highly refractive, oval or spherical bodies, which, under certain circumstances, make their appearance in the interior of the rods, which cease to multiply by binary division where spore formation has taken place. The point of special interest with reference to these spores is that they have a resisting power to heat and to the action of chemical disinfectants far beyond that which is possessed by micrococci, or by bacilli without spores. The difference may be compared to the difference between a tender plant and its seeds to deleterious influences, such as extremes of heat and cold. Thus the spores of certain species of bacilli withstand a boiling temperature for several hours, while a temperature of 150° Fahrenheit quickly kills most bacteria in the absence of spores. A similar difference is shown as regards the action of chemical agents. Certain agents,— *e.g.*, sulphurous acid gas and carbolic acid,— which are extensively used as disinfectants, have been proved by exact experiments to be quite impotent for the destruction of spores. This being the case, it is advisable, in practical disinfection, always to use an agent which has the power of destroying spores in those cases in which the exact nature of the disease germ has not been demonstrated. The germs of cholera, of typhoid fever, of diphtheria, of bubonic plague, of tuberculosis, of pneumonia, of erysipelas, and of influenza, do not form spores; and there is good reason to believe that the same is true as regards the germs of yellow fever, of scarlet

fever, and of small-pox, which have not yet been demonstrated. This inference is based upon evidence obtained in the practical use of disinfectants, and upon certain facts relating to the propagation of these diseases.

All of the disease germs mentioned are quickly destroyed by exposure, in a moist condition, to a temperature of 180° Fahrenheit, or by a 5 per cent. solution of carbolic acid, or by a 1-1000 solution of corrosive sublimate, or by freshly prepared milk of lime (whitewash), or by a solution of chloride of lime (8 ounces to a gallon of water), or by formaldehyde gas.

IV. DEPARTMENT OF EDUCATION AND ART.

1. INDIAN EDUCATION.

BY GENERAL T. J. MORGAN, LL.D., *EX-COMMISSIONER OF INDIAN AFFAIRS.

[Read Friday morning, April 25.]

Indian education is of interest both as an academic and a practical question. The question is old, but not trite, and its consideration is timely, and ought to be helpful in some degree in determining the policy of the government regarding its Indian wards; but its treatment in a paper of twenty-five minutes' length must necessarily be both concise and incomplete. So far as education is a function of the State or of the national government, it must be regarded as one among many factors contributing to the general purpose of fitting its subjects for American citizenship. The cardinal principle of the republic is equality of privilege and of responsibility. Our whole system of republican institutions, indeed our peculiar type of civilization, rests upon the absolute freedom of the individual to share in all the privileges of citizenship and his ability and willingness to discharge all its duties and obligations. The ultimate success or failure of our experiment of self-government will depend largely upon the intelligence and morality of the masses of our citizens. Civic culture as a condition for the discharge of civic duties, and a participation in civic privileges, is the paramount function of our republic. The government cannot do all; but it can and must, for the sake of its own self-preservation, do much toward the civic culture of its future citizens, the children and youth of the present day. To the ordinary formative forces of life, such as the family, private schools and colleges, the church, the newspaper, participation in political activities, the use of a common tongue, and that indefinable but irresistible force which we term public opinion, there has been added a costly system of public schools. The resultant of

*General Morgan died before his paper reached the hands of the printer, and the editor of the Journal has revised the proof of the original copy.

these co-operative forces, it is confidently expected and believed, will be a homogeneous nation of free men, dominated in the main by a common patriotism. Excluding now all reference to the inhabitants of our island possessions, Porto Rico, Hawaii, and the Philippines, and excepting also the Chinese and the negro element, it may be confidently affirmed, notwithstanding the enormous flood of foreign immigration emptying upon our shores millions of aliens, that there is a steady though slow progress toward the realization of the ideal republic.

The relation of the Indians to the masses of our people is peculiar; and any discussion of their complete assimilation into our national life must of necessity take account of their history, their isolation, their racial traits and prejudices, and their environment, as well as the character of the land upon which they have been forced to live. No system of public schools of whatever character can be relied upon to change radically and comprehensively all the relations of the Indians to the rest of us. At best it can be relied upon only to contribute something toward the final result.

After a long, painful, and costly experience in dealing with the Indians, it came at last to be recognized that the national government should undertake their education; and, accordingly, about twenty-five years ago an appropriation of $20,000 was made from the public treasury for Indian education, and by successive accretions the sum annually appropriated now exceeds $3,000,000.

The Indian schools of to-day can hardly be called a system: they are rather a series of institutions having an historic origin, and having been slowly brought into organic relationship. Like Topsy, the system "growed." It comprises district public schools, reservation day-schools, reservation boarding-schools and non-reservation boarding-schools. Having had something to do with remodelling the schools and enlarging them during the Harrison administration of 1889–1893, I am naturally interested in the practical outcome of the scheme.

It is more than nine years since I left the office, and during that time I have had only limited opportunities of knowing of the practical working of the schools. On receiving an unexpected invitation to prepare a paper for this occasion on the subject, I naturally turned to the latest Report of the Indian Office, bearing date October, 1901. I found a very interesting and somewhat

surprising discussion of Indian education. The Report, while not self-consistent, is apparently intended to discredit the whole Indian school system and to call for its abandonment. It seemed to me, therefore, that I might properly examine the arguments adduced against the system by the Indian Office. Certainly, if those officers of the government specially charged with the responsibility of administering the system have lost faith in it, we can expect neither support from the government, effective work by subordinates, enthusiasm on the part of students, nor the confidence and sympathy of the people. The system is doomed to decay unless it can be vindicated from the deadly assault made upon it by the Indian Office. Let me now invite your attention to these destructive criticisms.

Under the heading of "Well-meant Mistakes" the Report refers to "the obstacles in the way of the Indian toward independence and self-support," and says, "Further observation and reflection leads to the unwelcome conviction that another obstacle may be added to those already named, and that is education." Here, then, is the declaration that Indian education as now conducted is an obstacle to Indian progress. As if recoiling from the violence of the blow, the Report seeks to soften it by adding that "the present Indian educational system, taken as a whole, is not calculated to produce the results so earnestly claimed for it, and so hopefully anticipated when it was begun." On page 3 it is said, "While it is not denied that the system has produced some good results, it is certainly questioned whether it is calculated to accomplish the great end in view, which is not so much the education of the individual as the lifting up of the race."

Speaking of the influence of government education upon the individual Indian, the Report says (page 2) of an Indian child who has been sent to a government school: "Here he remains until his education is finished, when he is returned to his home,— which by contrast must seem squalid indeed,— to the parents whom education must make it difficult to honor, and left to make his way against the ignorance and bigotry of his tribe. Is it any wonder he fails? Is it surprising if he lapses into barbarism? Not having earned his education, it is not prized. Having made no sacrifice to obtain it, it is not valuable. It is looked upon as a right, and not as a privilege. It is accepted as a favor to the government, and not to the recipient; and the almost inevitable tendency is to

encourage dependence, foster pride, and create a spirit of arrogance and selfishness." Speaking of the general results of the system upon the Indians, the Report says (on pages 3 and 4): "What is his condition to-day? He is still on his reservation; he is still being fed; his children are still being educated, and money is still being paid him; he is still dependent upon the government for existence; mechanics wait on him and farmers still aid him; he is little, if any, nearer the goal of independence than he was thirty years ago, and, if the present policy is continued he will get little, if any, nearer in thirty years to come."

On page 4 we find: "The primary object of a white school is to educate the mind: the primary essential of Indian education is to enlighten the soul. Under our system of government the latter is not the function of the State." The conclusion to which the Report comes is that the entire system of costly boarding-schools, both non-reservation and reservation, should be dispensed with, and that "so long as the Indians are the wards of the general government and until they have been absorbed by and have become a part of the community in which they live, day-schools should be established at convenient places, where they may learn enough to transact the ordinary business of life. Beyond this in the way of schools it is not necessary to go, beyond this it is a detriment to go."

Surely, this is a pessimistic view of the situation; and, if accepted as a final judgment upon the Indian schools, we are certainly maintaining a most extravagant and harmful system.

We are not quite prepared, however, to accept this deliverance of the Indian Office on this important matter; and I venture to point out what seem to me some defects in the logic of the portions of the Report already quoted. The writer apparently expects too much of the system of Indian education; for, as I have before stated, education is only one of the factors in the process of civilization and the uplift of a people. No intelligent student of the past would pretend to claim that the progress of the American people as a whole, which is one of the most striking incidents of modern history, is due alone to the magnificent system of public schools which exist among us. The great currents that flow together, carrying the race onward and upward, are many and forceful. By the peculiarities of the situation the Indians, almost alone among the various constituent elements of our national life, are

scarcely touched by the great forces of industry, trade, commerce, political activity, newspapers, travel, religious institutions and public opinion: they are almost wholly outside of these currents of influence. The quickening and regenerative forces emanating from the family life, the inherited civilization of a thousand years, and from the kindergarten, common schools, Christian schools, colleges, and universities, have scarcely touched the Indians, so that we could hardly expect to find among them those rich results which among ourselves have come from forces not operative among them. Let us bear in mind also, in asking for results from a system of public school education among the Indians, that that system is very far inferior to the public school system operative among the white population. Most Indian pupils spend the greater portion of their school life in learning the English language, in acquiring some of the simpler habits of civilized life, and in becoming acquainted with the mere rudiments of education. The so-called graduates of the best Indian schools would not rank with university or college graduates, not with high school graduates, scarcely even with those of the grammar schools. They are called graduates only by courtesy; and their scholastic attainments are ordinarily as well as necessarily very meagre. It is hardly fair, therefore, to demand from the educational system that has been adopted any such results as issue from our public schools.

I am also inclined to differ from the Report which I am considering "as to the great end in view," which it states to be "not so much the education of the individual as the lifting up of the race." Undoubtedly, the ultimate end hoped for is the elevation of the entire body of Indians and their assimilation into our national life. This, however, cannot be done by wholesale, but must be done very largely by introducing a radical revolution in the life of the individual. What has been claimed heretofore by the Indian Office has been that the solution of the Indian question, so far as it depends upon the influence of education, is to be found in the thorough training of an entire generation of Indian children and youth.

I suppose there is not any question whatever that the present school system is accomplishing all that could be asked for it or expected of it in the matter of improving the life of individuals. Fortunately, we have valuable testimony on this point in this report which we are considering. On page 14 the statement is made

that "statistics of returned pupils indicate that there are hundreds of graduates of training schools who are earning their own living as shoemakers, or cobblers, blacksmiths, carpenters, bricklayers, painters, farmers, etc." On page 40 it is stated, "From the data thus obtained statistics relating to returned Indian pupils were collated, from which it appears that the government officials, who are thrown into immediate contact with this class of Indians, rate 10 per cent. as 'excellent,' the results of the educational methods demonstrating that they have taken full advantage of them, standing out above the average returned pupils, and would be classed, if in a white neighborhood, as men and women elevated somewhat above those with whom they are brought in contact; 76 per cent. compare favorably with white boys and girls under similar circumstances, and indicate by their actions, since their return to the reservations, a career similar to that of the average white man; 13 per cent. have raised themselves somewhat above the level of the Indians in the same environment, but the results of whose education cannot be said to be good; 1 per cent. have not been, so far as their lives and actions are concerned, in any way benefited by the education which has been given them." On page 41 occurs the very gratifying remark that "the data above presented is a complete refutation of the statement that the educated Indian returns to his reservation to take up the blanket and his old customs." Further, it is said, "The sum of the whole matter is that the average Indian girl or boy is doing as well in his own environment as the same type of the American." Surely, this is all that can be asked, as we can hardly expect the "average" Indian boy or girl to do better than the average white boy or girl under similar circumstances.

What the influence of this education is upon the general progress of the tribes, or upon the uplifting of the mass of Indians, may be inferred by this statement, found on page 41, where, in refuting the oft-repeated charge that the educated Indian returns to his reservation to take up the blanket and his old customs, the Report says: "That such was the case eight or ten years ago may have been partially true. Then the reservations were wilder, conditions more primitive, and the number of pupils returned quite small. Now conditions have changed; and, where then there was one returned student in the tribe, now there are hundreds. Then the boy or girl who had been educated in the white man's ways was com-

pelled alone to battle for his or her new rights; and it is no small wonder that there were many modern martyrs on Indian reservations, where everything combined to wean him or her away from the acquired habits. But the seeds thus implanted have grown an hundred-fold, and to-day the returned student is the most prominent factor in the development and upbuilding of his tribe."

In passing judgment upon the efficacy of the present Indian school system for the accomplishment of its great purpose, it ought to be remembered that it is still incomplete. According to the Report (page 30) there are now enrolled 27,520 pupils, with nearly 6,500 unprovided for. These six thousand constitute a very important part of the young generation of our Indian wards, which has not been touched by the educational forces now operating. The ultimate effect of the system, of course, cannot be judged until it has embraced practically all the available children of school age, and it is manifestly unjust to pronounce a system a failure before it has been fairly tried.

The criticism upon the present system of education in the Indian Office Report (page 2) which I have already quoted — namely, that, the Indian "not having earned his education, it is not appreciated; having made no sacrifice to obtain it, it is not valued," etc.— is, if valid, equally applicable to the public school system for white children. No pupil of our free schools pays anything for his education; for, while it is true that the system, as a whole, is sustained by public taxation, the chief burden of the taxes falls upon the rich and the comparatively few, while the benefits of the system are enjoyed by the poor and the masses. It is also true, in a great measure, that the education which young men and young women receive from colleges and universities is to a large degree gratuitous, students, where they pay tuition at all, paying only a small portion of what their education actually costs. In addition to this, vast sums of money are paid out year by year in the form of scholarships, fellowships, prizes, and beneficiary aid; and, while the suggestion is occasionally met with that such assistance tends to weaken in the mind of the pupil his sense of manly independence, nevertheless we do not think that the objection to free schools and to beneficiary aid are really well founded. The tendency all the time is toward cheapening education and bringing the greatest possible advantages within the reach of the greatest possible number. From the very nature of

the case the rising generation is dependent upon their elders. The children are beneficiaries; and, if they are educated at all, it must be not at their own expense, but at the expense of others. This objection, therefore, urged against the Indian school system either proves too little or it proves too much. The whole trend of modern princely beneficence is toward increasing the facilities, and lessening the expense of education, as is illustrated by Rockefeller's gift of ten millions to Chicago University, Carnegie's ten millions for an educational foundation in this city, ten millions more for university extension in Scotland, the splendid gifts of Peabody, Slater, and others for the promotion of education in the South, not to speak of the foundation by Cecil Rhodes of one hundred free scholarships at Oxford for the benefit of American students.

Let it be further observed on this point that the system of professional training for the officers of its army and navy which the government maintains at large expense at West Point and Annapolis is even more exposed to this shaft of criticism than is the Indian school system. The government receives into these institutions naval and military cadets, and not only does for them all that is done for the Indians in the most favored government boarding-schools, but after the young men have graduated from West Point and Annapolis they receive appointments to lucrative positions in the army and the navy, with the understanding that, if they are wounded or disabled in action, they are to receive pensions, and, if they serve to the allotted period, they are to be retired on half-pay for life. This scheme of education has been in vogue among us for a great while; and, if the fact that it is bestowed upon young men "without money and without price" tends to "encourage dependence, foster pride, and create a spirit of arrogance and selfishness," that fact ought to be by this time pretty well in evidence. So far as I can judge, if this criticism were made against the schools at West Point and Annapolis, it would not receive any very grave consideration either from the government or the general public.

The criticism aimed at the beneficiary feature of the Indian schools is, in effect, an arraignment of the wisdom of modern philanthropy, modern policy, and of the sanity of modern civilization.

Let us examine this dictum of the Indian Office: "So long as the Indians are wards of the general government, . . . day-schools

should be established at convenient places, where they may learn enough to transact the ordinary business of life. Beyond this in the way of schools it is not necessary to go. Beyond this, it is a detriment to go." Here it is assumed that the national government, as the guardian of its Indian wards, charged with the responsibility of fitting them for life's duties and for American citizenship, is to limit their educational opportunities to those afforded by Indian day-schools, in which is to be given only enough schooling to transact the ordinary business of life. The States, through their public school system, are offering to the children and youth within their limits the advantages afforded by schools, extending from the kindergarten to the university. They provide reformatories for wayward children, normal schools for those who wish to teach, extended and technical courses for those who wish to follow agriculture or mechanical pursuits. The whole trend is in the direction of affording to the masses of American youth larger range of study and a higher grade of instruction. Now why should the national government offer to its wards so much less in the way of schooling than is offered by the States to the pupils in the public schools? Is the Indian so much smarter than the white children that a less degree of schooling will fit him for the duties of citizenship? Is the environment of the Indian child so much more helpful in life's struggles than that of the white child that he can dispense with almost all of the advantages of education which are so freely offered to the white child?

Every child born into the republic is entitled to claim as his birthright such kind and degree of education as will fit him for good citizenship. The Indian child has a right to demand of the government, which has assumed the responsibility of his training, that he shall not be hopelessly handicapped by such an inferior training as from the very beginning dooms him to failure in the struggle for existence and the competition for life's prizes.

Another somewhat radical criticism which is made by the Indian Office Report (page 4) is that, "in a word, the primary object of a white school is to educate the mind: the primary essential of Indian education is to enlighten the soul. Under our system of government the latter is not the function of the State. What, then, is the function of the State? Briefly this: to see that the Indian has the opportunity for self-support, and that he is afforded the same protection of his person and property as is

given to others. That being done, he should be thrown entirely upon his own resources, to become a useful member of the community in which he lives or not, according as he exerts himself or fails to make an effort." We submit that this argument, which at one stroke sweeps the whole government system of education out of existence, has the same force when applied to white education as when applied to Indian education. Are we prepared, then, to concede that the function of the State ceases when it has simply protected its citizens in person and property? Is our entire public school system a perversion of governmental functions? Is there any such distinction between white and Indian education as that indicated in the quotation just made? What is the difference between educating the mind and enlightening the soul? Why should the former be the primary object of a white school, and the latter of an Indian school? There must be some weighty philosophy in this characterization of the primary essential of Indian education as the enlightenment of the soul, in order that it may be used as a weapon for the utter destruction of the whole vast scheme of government education of the Indians, but precisely what it means I am unable to tell. I gravely suspect that it is "distinction without a difference."

After having condemned the system, the Report (page 30) recommends that "adequate facilities should at once be made for the five or six thousand children still unprovided for. It will cost several hundred thousand dollars to accomplish this result, but the money will be wisely expended." If any more than meagre day-school training is "detrimental" to the Indians, and if the education afforded them by government schools is an "obstacle to their progress," I fail to see upon what ground the office can ask not only for its continuance, but for its enlargement.

This cursory examination of this extraodinary public document, this Hyde and Jekyll report on education, which is surely unique in the annals of the Indian Office, leads me to conclude that the Report is inconsistent with itself, that its theory of Indian education is not supported by the facts presented by it, that its argument in favor of the overthrow of the system is wholly inconsistent with its plea for its enlargement, and that its arguments against the present school system are illogical, inconclusive, and harmful. What, then, should be done with the Indian school system? I can only answer briefly: First, it should be extended until it in-

cludes the entire generation of available school children. Second, it should be allowed to continue a reasonable time until it has had a chance to vindicate its right to be, or until incontrovertible facts regarding its failure shall warrant its discontinuance. Third, the system should be administered with vigor, intelligence, and enthusiasm, along the general lines of its present work. Such changes and modifications in detail should be introduced as experience demands and justifies. From correspondence had with principals of non-reservation schools, I think the industrial feature of the system needs immediate attention. The instruction given should be of a higher order, by men and women specially trained as industrial teachers. Mere copying of crude labor is not industrial training. Fourth, special stress should be laid upon; (1) giving to the pupils a practical mastery of the English language, so as to bring them into relationship with the currents of life and thought of the nation; (2) upon the acquisition of those simple civilized habits of neatness, order, punctuality, fidelity, industry, etc., characteristic of civilized beings; (3) upon the development of a robust moral character, which recognizes the distinctions of right and wrong and the personal obligation to do the right and resist the wrong with a strong, well-developed love of the true, the beautiful, and the good; (4) upon such application of manual or industrial training as will develop power, impart skill, and put the pupils in the way of acquiring such trades as will render them self-supporting and independent; (5) upon such an impartation of the rudiments of common branches as experience has shown to be most efficacious in developing mental power, awakening aspirations and desires, while at the same time storing the mind with such facts and truths as will be most serviceable as a part of that general intellectual equipment which every intelligent man and woman of this day ought to possess; (6) it is, perhaps, quite enough to ask that the masses of Indian children of both sexes shall be carried through these lower grades of school-work, but provision should be made for the higher education of the exceptional few who show special aptitude for scholarship, and manifest special gifts which will fit them for leadership among their people. It is true of the Indians, as of any other race of people, that they are profoundly influenced by those who are endowed with capacity and fitness for leadership. A few men in each tribe or in each community, thoroughly educated, will have a tremendous influence for good upon the masses of the people.

The work of educating any part of the rising generation so as to fit it to take up life's burdens, and carry them strongly, happily, and successfully, is one of great difficulty. It presents to the world a perennial problem. The perplexities that emerge in Indian education are incident partly to human nature and partly to minor peculiarities of Indian nature. The problem is not insoluble.

At the conclusion of General Morgan's paper, Mr. Herbert Welsh, of Philadelphia, delivered an address dealing with certain aspects of the Indian problem. A brief abstract is herewith appended: —

Mr. WELSH. — Fifty years or more ago the favorite theory for solving the Indian problem was to make a great Indian State west of the Mississippi, into which all the tribes wilder than the Creeks, Choctaws, and Cherokees, who formed its members, should be herded. The Indian was to be civilized by segregation. But that idea has broken down utterly; and for the past twenty years, at least, the government and nearly all friends of the Indians have been committed to the wiser policy of civilization by absorption.

General Grant, the soldier, started the "peace policy," which wisely aimed to direct the churches of the country to the work of Indian civilization through the quiet paths of Christian charity, of education, agriculture, and justice. Great good came of the effort. General S. C. Armstrong, of Hampton, aimed to inspire the Indian student with the missionary spirit that would send him to his Western home to leaven his race with new life. Captain Pratt, of Carlisle, sought to make him leave and forget his race, and seek direct personal salvation by immersion in the stream of modern life at its swiftest flowing point. Both ideas were excellent, and each had compensating advantages.

Two important questions at this juncture were how best to change the hostile sentiment of whites toward Indians into one friendly and rational, so as to produce both favorable legislation and executive action at Washington, and how to overcome Indian conservatism on the reservations and distrust of whites, so as to make the former line of activity to the fullest degree successful.

The Indian Rights Association has been the natural outgrowth of this need. It has been the channel of communication between

the Indian and the whites. Its aim from the beginning was to promote wise educational projects by the government on behalf of the Indian; to promote good legislation in Congress, such as the Dawes land in severalty bill, which became a law in 1887, and to block vicious projects of selfish and corrupt schemers, such as constantly may be found gliding through our legislative chambers for the lack of a vigilant heel to crush such snakes. In order to give these good intentions on the part of generous friends of the Indians effective force at the national capital, the association has had in all the twenty years of its existence an experienced agent there to represent its interest during the sessions of Congress.

The hardest and most persistent battle the society has had to fight has been that of civil service reform. The spoils system, tending to remove good Indian agents and other officials and to put in poor ones, has been the great foe of a good Indian service. The agitation and persistent work of the Indian Rights Association led directly to the introduction of civil service reform here. The employees in the Indian school service, and most of the subordinate positions on the reservations, are now included in the classified service. To Indian Commissioner Morgan belongs the chief credit of introducing the new system. The post of Indian agent, the most important of all, still remains outside. This position has been the sport of politicians. With each change of administration nearly all the sixty Indian agents are changed for political reasons, and appointments are made at the direction of local bosses. The system is thoroughly vicious, Some judicious plan of promotion from lower grades in the service and regulated by a competitive test would probably be the best remedy for a serious abuse.

One of the greatest obstacles in the way of a just settlement of the Indian problem is the difficulties encountered in protecting Indians in the possession of their lands. The pressure of white demand is hard to resist. The case of the Saboba Indians in Southern California is one where some four hundred mission Indians were threatened with eviction by a rich land claimant. The case at first went against the Indians in court, but an appeal to the Supreme Court of the State resulted in a decision in their favor. Very recently a case which was apparently similar, known as the Warner ranch case, was decided against the Indians; and that decision was affirmed by the Supreme Court of the United States.

In both cases the association took an active and costly part in defending the Indians.

To summarize in conclusion: The North American Indian should be absorbed by our civilization. In numerous cases he has shown himself capable of an earnest, faithful religious life, of self-supporting industry, of mental refinement and development. His race, however, is distinctly feebler, more juvenile than ours. But he is subject to the same great moral and physical laws that govern us, and on which our welfare is dependent. He must be protected during the intermediate period between savagery and civilization from the cupidity and vices of the white race by organized popular efforts, such as the Indian Rights Association represents. The right working of the government's humane purpose for his welfare depends largely on this unofficial popular interest and aid.

The probabilities are that many Indians will thus be saved to honorable and useful though humble lives, which otherwise would inevitably sink into hopeless, gypsy-like vagabondage and decay.

An incidental but valuable service of the Indian Rights Association lies in the proof it gives of the efficacy of popular sentiment run into permanent and organized channels or a corrective of official corruption or inefficiency. Such organizations are essential to the health and vigor of a democracy, and are a counterweight to the downward tendency of personal or corporate interest acting on the official structure of the government.

DISCUSSION.

Mr. MERRIAM.—We have just listened to a great deal of logic and argument and eloquence on the general subject, but we have not heard much in detail with respect to the practical side of the question of Indian education. There are two obstacles which confront us all the time in this matter, on which sufficient stress is not laid. One is that the good people who have charge of these matters, or who are charged with rendering advice on the subject of Indian education, are, as a rule, with very few exceptions, really unfamiliar with the conditions. They are on theoretical grounds framing rules. They are unfamiliar with the Indians themselves, with their real lives and their real spirits. Most of them have seen Indians on reservations, but have not been with them long enough to know what the Indians are, how they regard matters of education, and how they can be reached by education.

The other obstacle is that we are all inclined to look upon the Indian as a unit. This is one of the greatest and most fatal mistakes. We can no

more look upon the Indian as a unit than we can look upon the human race as a unit. The time will undoubtedly come when races will be so blended all over the earth that the human race will be a unit, but we shall not live to see that time; and we who are in this hall will not live to see the time when the Indian race will be a unit. The Indian is made up of a great many tribes of totally different stocks and different degrees of savagery, barbarism, and civilization; and, to educate the Indian, we must recognize that we are educating Indians,— that we are educating peoples of different degrees of intelligence and of development in civilization. We have only recently heard that one of the tribes — I believe the Omahas — had advanced so far in education, in civilization, that they asked to have their Indian schools done away with, that they might share the ordinary schools of the whites. It seems to me, this is an ideal toward which to look with a great deal of pleasure; but, before anything of this sort can be the case in any number of tribes, a great many primitive people must live in contact with civilization — that is, on the borders of civilization — for very long periods. As it is to-day, we have progressive Indians. Some civilized tribes have been longer in contact with whites,— tribes in which almost every individual member speaks English, many of them much more fluently and grammatically than I do. They are people who are in a condition ready to embrace higher education. They are people who could go into high schools, many of them to colleges, and profit by them. But we have other Indians — thousands and thousands of them — among whom the majority of the people not only cannot speak English, but among whom only a very few individuals can speak English at all; and Indians who live, not in rude log cabins, but in tepees and in brush wigwams on the prairies and on the mountain sides in California. These are the people that we are called upon to do something for in the way of education; and, amongst these people, we must begin at the beginning. We must, I think, pay much more attention to industrial education. These are the schools in which I have the utmost faith. We must improve the teachers in the schools, as Mr. Welsh has just told you we need to improve the Indian agent. Nothing is truer than that. We have now, on the whole, a very good class of Indian teachers; but many of them will bear a great deal of improvement. We want people who do not go to the Indian school merely to draw a salary and to get along without friction with the Indian, but people whose heart is in the work of instruction, as is truly the case with many of the frontier teachers. But there has been something in Washington in the atmosphere of the Indian Office that, in my judgment, is not in harmony with the progress of education. It is something which has been shared, perhaps by the Indian Office in Washington and by missionaries on the reservations — a sort of cloud that has held them back, and prevented them from being as useful to the Indian as they might have been. The Indian has been taught to despise the things which the Indian can do well, and to imitate the white man in doing things which the Indians cannot do well, or which would be of little or no value in the lives they are bound to lead in the immediate present,— during our lifetime. We should encourage the Indian everywhere to cultivate his native industries,— his basket-making, his bead-work, and everything by which he can make an honest living, and by which

he can make those articles which he can make well, and which are useful either for purposes of utility or works of art, and for which there is a good market almost everywhere.

In order to teach the Indian English, we must first know his language. It seems to me common sense that the teachers should know a little about the Indian language, because to take an Indian and try to teach him English, when we know absolutely nothing of his language, is an exceedingly difficult task. It is a fact, although many of those here may be surprised to know it, that the teachers on the Indian reservations — many of them, at least — feel that they are not allowed to know anything about the Indian language. They feel that it would be frowned upon from headquarters if they knew the meaning of any Indian words. In my work in the field in the West for thirty years, I have been in contact with the Indians on the reservations and with thousands of Indians who are on no reservations, who receive no aid from the government; and I have found, to my amazement and horror, that the teachers on Indian reservations are actually afraid to use an Indian word or to know the meaning of an Indian word. I have gone to a teacher who had been fifteen years on the reservation, and said, "Will you tell me the real way to spell the Indian name of those beans?" and he would say: "We do not know anything about that. We do not dare to mention the name or to ask the children. They would not like it at Washington." They had been there fifteen years, and were afraid to know the name of a simple article of food in use among the Indians. This is one of the things we want to abolish.

We must not take these uncivilized Indians, who constitute a large part of the Indians to-day, and try to educate them for lawyers and electricians and compositors on newspapers and magazines and the other industries in which they are educated in the non-resident reservation schools. So few of them can ever find employment that, in my judgment, this is really a cruelty. There is a young Sioux in this city to-day, unless I am very much mistaken, a graduate of Carlisle, who has fitted himself for an electrical engineer; and he is having the hardest work in the world to get a living. He wants people to give him a job on their lawns and cleaning out their cellars,— anything by which he can make a living. He cannot compete with the modern American as an electrical engineer; and I have known of watch-makers and Indians who were taught other trades which would be of no possible good to them on the reservations. I believe in teaching them blacksmithing and shoemaking and carpentering. I have seen splendid artisans in these simple trades everywhere in the West among the Indians, and in the Indian country, who were respectable and respected members of the community, and who were useful citizens, doing things that they could do well and by means of which they earned an honest living.

I think in our endeavors to educate the Indian we should lay special stress on the advantages of the reservation school, and should only in rare instances send Indians away to the non-resident school. This, it seems to me, is a very vital, a very important matter. We must take the Indian as he is, and not as we would like to have him, say, a hundred years hence.

2. EDUCATION IN PORTO RICO.

BY MAJOR GEORGE G. GROFF, M.D., SOMETIME SUPERINTENDENT OF PUBLIC INSTRUCTION IN PORTO RICO, UNDER THE MILITARY GOVERNMENT.

[Read Friday morning, April 25.]

Porto Rico lies nearly due south of New York 1,470 miles. As the steamers now run, it is exactly five days between New York City and San Juan, the capital, though the time may in future be shortened to four days.

In size the island is a hundred miles long by forty miles wide, nearly rectangular in shape, and only a trifle smaller than the State of Connecticut. There is a narrow border of level land along the coast, with small level valleys extending up the larger rivers into the interior. While this interior is very much broken, the highest mountains, located near the eastern end of the island, are but about 3,600 feet high. All the lands are well drained, and there are practically no swamps on the island. The soil is a mixture of detritus derived from decomposed igneous and coral limestone rocks, and is very fertile to the summits of the mountains. Originally, the land was heavily timbered; but this has all been removed, and there is not now sufficient timber or fuel for the use of the island. It is a land natural to grass, which grows everywhere, and is so nutritious that no grain is fed, either to horses or horned cattle.

The climate is that of perpetual summer, but a summer cooler than that of New York, Philadelphia, or Washington. The island lies in the ocean so far to the east that it is wholly free from climatic influences from the continent. The highest temperature of summer is 93°, the lowest of winter 52°, an annual range of 41° Fahrenheit, while the city of Washington has an annual range of 118 degrees; and at Pierre, in South Dakota, a range of 180 degrees has been observed. The daily range of temperature is from 5 to 10 degrees, and the monthly from 5 to 18 degrees. The nights are always pleasantly cool, and woollen clothing should

always be worn after sundown. Sunstroke and heatstroke are absolutely unknown. While the air is very moist, this is not oppressive because of the constant strong breezes, the island lying in the north belt of trade winds. Because of the smallness of the island and the constancy of the strong winds, the air is wonderfully pure. Foul smells are unknown away from human habitations, and hides and meat can be dried in the open air.

The annual rainfall at San Juan is about 59 inches. Rainy and dry seasons are not well marked. While rain is frequent, the fall is mostly in showers; and the ground dries off rapidly when the rain ceases. Nothing observed in the climate is injurious to the white race. There has been no yellow fever in Porto Rico for ten years; typhoid fever is rare; pneumonia and diphtheria are mild; scarlet fever is said to be unknown; tetanus is common among the new-born, but is preventable; and not a single serious tropical disease exists. There are about thirty lepers on the island, but the disease does not spread. Tuberculosis and tropical anæmia are very prevalent, but are believed to be due to unsanitary conditions and to the extreme poverty of the people. There is some dysentery; but it is uncomplicated, as in Asia and Africa.

Insects (except certain domesticated ones) are very rare; birds are seldom seen; there are no reptiles, and but a single wild mammal, a species of jack-rabbit. The crocodile and the turkey buzzard, seen elsewhere in the West Indies, do not visit Porto Rico.

The population numbers 951,000, or 260 to the square mile. This is exceeded in the States only by Massachusetts and Rhode Island, which have respectively 301 and 270 per square mile. It is about the same as New Jersey, twice that of Pennsylvania, and three times that of Illinois. In Europe, England has 540, and Holland 384, per square mile.

The people to the number of 800,000 live in the country. There are but two towns having a population above 25,000, and 57 towns which have above 1,000 population. Females are slightly in excess of males. In color the people are dark, like most Italians and Spaniards, often of a beautiful brown or chestnut color. The hair is dark, coarse and long like that of the American Indian. The teeth are noticeably defective,— a point observed by Columbus. The average person is short in stature and light in weight. The educated people who are well fed do

not differ much in height or weight from those in the United States.

In race the Spanish blood predominates, coming from Catalonia and Biscay, but also largely from the Canary and Balearic Islands. Indian and negro blood are also in constant evidence. Next to the Spaniards, the French settled in Porto Rico, many coming from Santo Domingo at the time they were expelled from that island. There are also people from all the nations of Europe, both north and south, from North and South America, from Arabia, Palestine, and China. The admixture of many bloods and the climate have differentiated a distinct people. The last census gives 59,390 Africans. 38.2 per cent. of the population is colored, and 61.8 per cent. white. The island is the whitest land in the West Indies. The laws, language and social customs are those of Spain.

The people are mild-tempered, generous, teachable, courteous, peaceable, honest, industrious. The sense of order and the æsthetic sense seem entirely absent among the peons (laborers). In all the great distress due to change of government, and following the great hurricane in 1899, no social disturbances occurred. No insurrections have ever arisen in Porto Rico. 800,000 people were vaccinated by the military government without a single arrest! If the people do not work continuously, it is because work is not to be obtained, or, from lack of nutritious food, continuous labor is a physical impossibility. In two years in hotels and boarding-houses my door and my trunks were never locked, and no single article was ever missed. In a population of 1,000,000 persons but 1,000 are now in jail. Intoxication is never seen in public among the natives. They are remarkably temperate both in eating and drinking.

Families are usually very large, twelve to twenty children in one home being very common. Orphans readily find homes among their friends and neighbors. Among the peons, home and family circle, as we know it, does not exist. Race antagonism is almost unknown. There is no color line in the schools, although there is in social matters; but this does not extend to those with only a "taint" of negro blood in their veins. A black man (African) was elected principal of the San Juan schools in 1900.

The industry of the island is almost wholly agricultural, 263,580 persons being in 1899 engaged in it, or as simple laborers.

183,635 persons were unemployed in December, 1899, of whom two-thirds were females. Women do not work in the fields to any considerable extent as in other West India Islands. There were 124 clergy, 100 of whom were Catholic priests, or 1 to 10,000 people, 206 lawyers, 219 physicians; but one-third of the municipalities had no physician in August, 1900. Except in the production of sugar and tobacco, manufactures are nearly unknown. There are four match factories; local shoemakers and tailors; hats, baskets, soap, rum, and bay rum are produced; one or two small tanneries; excellent fireworks are produced. Silversmiths are found in the principal towns. The women produce embroidery, lace, drawn work, and artificial flowers, and weave panama hats. With the needle the women are very expert.

Sanitary Conditions.

As reported in the census of 1899 but three or four towns had any public water supply, not a single one a complete sewer system. Sanitary plumbing was unknown: human excreta polluted air, water, and soil everywhere. Of 150,305 houses on the island, 114,295 had no latrines whatever. There was practically no restriction of communicable diseases. Blindness from preventable causes was from four to six times too common. The cemeteries were in a very bad sanitary condition. Among the poor there is a great lack of nutritious food and of needful clothing, personal cleanliness is below par, cooking is nearly unknown. There is insufficient variety of food; rice, beans, bananas, codfish, and natural products being insufficient. Regular meals are unknown among the poor. Few games or amusements for young or old are known. Tropical anæmia is almost universal among the country people, doubtless due to eating with the fingers. The masses are in a state of chronic starvation. Until the advent of the Americans there was an absolute lack of everything pertaining to modern sanitation, and the poverty of the people now prevents its rapid introduction.

It is difficult to conceive how people could be poorer than the Gibaros, or peons, of Porto Rico. Their houses are built of sticks, grass, and reeds, thatched with palm-leaves. Two or three dollars will purchase such a house. Within there may be a hammock or two, a few calabashes, possibly an iron pot for cooking pur-

poses, but absolutely nothing else; of implements of agriculture, only the hoe and the machete, and very often only the machete. My predecessor, Dr. C. V. Clark, wrote in his Report on Education in Porto Rico: "There are barrios in the island where there is not a single building suitable for a public school; where there is probably not a single person who can read or write; where there are probably not a half-dozen families out of a population of 2,000 to 3,000 that have a daily income of a dollar; and where the average daily income of the family is less than 20 cents. Parents cannot clothe and feed their children in such a way as to enable them to receive an education." The people live in a state of chronic starvation, suffering from cold at night, and, when overtaken with fatal illness, have no almshouses or hospitals to which to retreat. Probably nineteen out of every twenty persons die without ever consulting a physician, and the causes of death reported by the health authorities are wholly a matter of guesswork nine times out of ten.

Living in such a condition, it is not surprising that they die rapidly. For the ten years preceding the American occupancy, the normal death-rate seems to have been about 29 per thousand per annum. But after the occupation, because of the unsettled conditions, and especially because of the hurricane of Aug. 8, 1899, the rate increased immensely, until in some towns it reached the enormous rate of 180 per thousand per annum. In July, 1900, the Superior Board of Health reported the following death-rates, per annum: Adjuntos, 180; Juana Diez, 170; Ponce, 90; Utuado, 130; Yauco, 166. These people in great part died of starvation and exposure, hastened by anæmia and dysentery. And yet at this very time the civil government thought there was but little distress and only an occasional hungry person on the island.

Literacy.

Of the whole population about 21 per cent. above ten years of age are able to read and write, at least a little. 50 per cent. of the city population is able to read, and 14½ per cent. in the rural districts. The census of 1899 gives 322,393 children of school age, just one-third of the population,— a much larger proportion than in the States; for families are much larger, and the duration of life probably less. About one child in ten is now in school.

There are in Porto Rico about 5,000 persons who may be considered liberally educated.

There are 51,560 voters who can read and write, or 1 in 36 of the population; while the proportion in the Northern States of the Union is about 1 in 5.

In 1899, 426 barrios had no schools at all. The population of a barrio may range from 200 to 4,000 persons. "A barrio, population 4,000, and paying $3,600 annual taxes, had not for twenty years had a teacher, a physician, nor a minister of the gospel" (Clark).

Contrary to what we find in the States, the poverty and the ignorance are greatest as one goes into the country. While all in the towns have something to eat and to wear, in the country the poor are naked and without food, and this on the richest soil and in a climate where a garden can be made every day in the year, and where many vegetables will mature in forty to fifty days.

Public schools had existed in Porto Rico since about 1845. On June 30, 1898, there were 381 boys' schools, 148 for girls, and 26 private schools,— a total of 555 schools; while in 1899 the number had been reduced to 529, the private ones being closed. 21,873 pupils were in school and the yearly expenditure $203,373 in 1898.

The census of December, 1899, showed 809 teachers, 526 schools, and a total appropriation of $413,113. In this system there was a small industrial school attached to the boys' orphan school.

In 1900 the insular budget allowed $400,000 for education, and in 1901 this was increased to $500,000. And the number of schools each year correspondingly increased.

Peculiarities of the Spanish educational system were as follows: —

There were no public school-houses, yet there was a theatre owned by nearly every town. There were very few school-books, and no uniformity among them; no desks or school appliances of a modern kind. Teachers generally had the most meagre attainments. The schools were wholly ungraded: much of the teaching was done by pupils. There was no limit to the number of pupils to be received by a teacher, cases where 150 were attached to one teacher being discovered. There was practically no discipline, and the pupils studied aloud. The supervisor appointed for the

city of San Juan reported: "The teacher gathered about him ten or more of the pupils, and the rest did what they liked. I do not know how to describe the method they used. I had never seen them before. All I know is that the pupils studied at the top of their voices, and the teacher added his full share to the confusion." Male teachers frequently smoked while teaching, and lady teachers drank tea and lunched during school-hours. Most of the schools were held in "propriety"; that is, for life. Teachers had the right to employ substitutes permanently. In this manner a teacher could possess more than one school. In one case a grand-daughter taught for the grandmother who lived in Spain. Schools were supposed to be open twelve months in the year, and six days in the week, but closed on Sundays and holidays. There were no regular hours for opening and closing school, and much time was spent in giving religious instruction. Teachers and other families resided in the school-houses. Coeducation was unknown, even among the youngest children. A man was not permitted to teach girls, and there were no rural schools for girls. Teachers generally occupied a low social position; and their salaries were the last paid in a municipality, cases being discovered where there were arrears of teachers' salaries for from five to ten years. In these cases, teachers supported themselves by *fees* which they collected from all pupils who were able to pay. Children who paid no fees received meagre instruction. Payment of teachers' salaries was commonly in orders upon the store of some favored merchant, where discounts of from 20 to 50 per cent. were exacted. In examinations both pupils and teachers expected to be informed of the questions some days beforehand: teachers even wrote out answers for pupils. Politics ruled in school, as everywhere else, and to their injury.

The above peculiarities were abated at once and without resistance, by the military government, and the schools are believed not to have been closed a single day on account of the change of government.

Beginning Jan. 1, 1899, under the advice of General John Eaton, the military government, besides correcting all the evils above enumerated, in the fifteen months of its continuance accomplished the following results: —

The schools were graded, the teachers were honestly examined and licensed. Teachers were deprived of "propriety" in schools,

but were given a license for five years, following a rule observed with other professional people having vested rights. A school term of nine months with holidays on Saturday was established; religious instruction was disallowed in schools, and church holidays abolished; regular daily school-hours were established. The rural schools were all opened to girls. Suitable text-books were selected, translated, and placed in the schools to the number of over 100,000 copies. A teacher's manual, explaining modern methods of instruction, was prepared and printed. Bulletins on hygiene, methods of instruction, and on topics of pressing importance were issued once or twice a month. Teachers for the first time were paid promptly, and in cash. A model school was erected, the first public school-house in the island, and equipped with modern furniture and with a faculty of eight instructors, all of whom spoke both languages. Several thousand modern desks were secured and distributed. A kindergarten, a kitchen garden, and a teachers' training school were all opened. A chemical laboratory was equipped with modern apparatus, and a thoroughly competent teacher placed in charge, who gave the first laboratory instruction ever known in the island. The number of pupils to a teacher was fixed at 50. Discipline was enforced in the schools. A pedagogical museum was started (suggested by the present Resident Commissioner Degetau). An American library and a pedagogical library were well started with several hundred volumes. An American flag was placed upon every school-house, and a map of the United States upon the walls of every school. Washington's birthday was observed in the schools with appropriate ceremonies in 1899 and 1900. Hundreds of photographs of American localities, as well as lithographs of Washington, Grant, and McKinley, were distributed to all the schools. An American school with six teachers was opened at Ponce, in which the only instruction given was in English. The Society to aid the Children of Porto Rico was organized. The Society to prevent Cruelty to Animals was reorganized; and a Porto Rican educator, Señor Degetau, asked the department to furnish to the schools a Spanish translation of "Black Beauty." Corporal punishment was prohibited in all the schools. 48 native teachers were sent to summer schools in the States. 74 American teachers, the most of whom are still on the island, were imported to teach English and to assist the native teachers in learning

American methods of instruction. The native and American teaching force was sifted, and the most incompetent and unworthy gotten rid of. The island was divided into 16 districts; and, after great effort and many failures, 16 fairly competent American supervisors were secured, who were working well at the close of the military government, and 13 of the same are still employed. Institutes were planned and approved by the military governor for the summer of 1899 and 1900 in each of the 16 districts. At this last series two illustrated lectures, with a powerful lantern, gave the native teachers ideas of American history and American scenery. It was several times necessary to give these illustrated lectures in the open air. The sessions were of two to five days in each district. Although a large number of schools were open while these institutes were held, yet 374 teachers registered, being 54 per cent. of those engaged during the year. The writer has known but a score of teachers in a county of 400 teachers to attend the Annual Institute in Pennsylvania, and in at least one case in Pennsylvania the institute was closed because so few teachers came. Professor George B. Benedict, who conducted these institutes, is a graduate of a leading American university, and an excellent Spanish scholar, familiar from long residence with the thoughts and customs of the Spanish-Americans. Of these institutes he reported: "The teachers obtained a better comprehension of the American educational system. Many wrong impressions were corrected, and prejudices removed. Some opponents were converted. Many difficulties were better understood by both sides because discussion revealed the difficulties as reviewed from opposite standpoints. Considerable interest was awakened in educational matters. The teachers now know what educational gatherings mean, their motive and aim. It will be easy to convene the teachers in educational conventions next year. A desire has been created to become acquainted with teachers' helps and self-improvement. We confidently believe that the seed sown in the educational gatherings will bear fruit."

Teachers' and superintendents' conventions were held in San Juan. Normal and industrial schools were planned; but only the former was opened because of the lack of funds and the impossibility of securing trained teachers who could work in the Spanish and English tongues. The industrial school required by law to be established has not yet been opened after two years of civil government.

Routes were opened up, where there were none, for the distribution of school supplies. Blank forms of all kinds were prepared in the two languages. The first women in the public service were employed in the school department at San Juan. Reports of the school system of the island under the Spanish and under the military government were prepared by Dr. Clark, which will remain the one source of information on these periods of the island's history.

To accomplish the work above enumerated in one year's time after it actually commenced required Herculean efforts. But this was done in the face of the hurricane of Aug. 8, 1899, which destroyed instantly 2,000 lives, and was followed by probably 20,000 deaths as a direct result, destroyed all telegraphic and mail communication and transportation facilities on the island for many months. The houses which might have been used for school purposes were nearly all destroyed in country places. The translators and publishers of text-books could not furnish these as fast as they were needed. School trustees, teachers, and people could not at once understand a system so different from that to which they had been accustomed.

It may be well here to note that an earnest effort was made under the military government to educate the native people in the American methods of administering republican institutions. The internal administration was by means of Boards, among which was the Board of Public Charities, the Insular School Board, the Board of Prison Control, Board of Public Works, Superior Board of Health, Advisory Board, etc. On these boards Americans and Porto Ricans served together in harmony. In the case of the Insular School Board there were seven Porto Ricans to two Americans. Under the civil government these boards have been displaced by directors, as Director of Public Health, Director of Prisons, of Public Charities, Commissioner of Education, etc. Autocratic rule reappeared in Porto Rico immediately on the advent of civil government. The military rule gave the government to the people themselves. The civil government so far has been administered by "benevolent directors." "Acts of despotism have been perpetrated which the military government would never have dared to accomplish." (Letter in San Juan *News*.)

To General Guy V. Henry belongs the honor of beginning the reform of the Porto Rican schools. This he began while the

Spanish were still in possession of half the island. General George W. Davis wisely continued and sustained the work, and to General John Eaton belongs the great honor of writing the school law of Porto Rico, under which the school system of the Spaniards was Americanized. General Eaton did not remain to put his law in operation. This was done by his immediate successors, who, aided by the military governor, General Davis, introduced such modifications as experience showed to be necessary to its smooth working.

The legislature of the island at its first session adopted a new law, leading features of which had been recommended by the military governor, General George W. Davis, to the Hon. Secretary of War, in his letter of Feb. 26, 1900, in which letter he also recommended an appropriation for school-houses of $785,000, of which sum President McKinley later gave $200,000. President Clark, in his Report (page 43) on Education in Porto Rico, recommended that "the central authority control and administer the educational system as the schools of Chicago and New York are administered."

The spirit of the present school law may be gathered from a single paragraph, which is given *verbatim et literatim et punctatim.* Section 21: "All high institutions of learning established or to be established in Porto Rico shall be such and shall be organized and controlled as the Commissioner of Education may from time to time determine, and he shall have full power, to take effect in this provision, provided that in no case shall the sum expended by the Commissioner of Education in the execution of this provision exceed the sum provided for education in Porto Rico." The author of this law claimed that it made him the educational Czar of the island, and it probably did.

We should not fail to give credit to the seven native members of the Insular Board of Education, who fully and cheerfully co-operated in all things to Americanize the schools, when they had it in their full power to stop and embarrass all changes proposed. They never placed a single obstacle in the way of the system, though they did complain of the slowness of the Americans in opening the schools; and they cheerfully gave their time to advance the interests of the children of the island.

The work of education has been retarded by the numerous changes which have been made in the head of the department of

education. Under the military government six gentlemen presided over this department in a period of eighteen months; while under the civil government, less than two years established, there have already been three heads. No stable progress can be made if these changes are continued.

On May 1, 1900, when the civil government went into operation there was in Porto Rico an American system of schools in as complete and harmonious working order as in Massachusetts or Pennsylvania. The growth under the civil government has been commendable; but the tree was planted, fertilized, braced, and had started into vigorous growth when the change in administration came.

The military government bore the odium of destroying old institutions and long-established customs; of closing the Institute and the Girls' Normal School, the only institutions of a higher educational character on the island; of depriving the teachers of their life tenure in their schools; of depriving them of their private fees; of abolishing the church and annual feast holidays; of establishing close supervision over each teacher's work by American inspectors; of requiring regularity in opening and closing schools.

This long, hard, trying work had to be done in the dark, when no information was in any way immediately obtainable concerning the school population, literacy, the most natural divisions of the island for supervising districts, means and routes for distributing school supplies, the sentiment of the people in regard to the introduction of American methods and American teachers, coeducation, the grading of the schools, etc. But the work was accomplished; and the educational craft, having sailed through unknown seas, tossed by tropical storms, with an untried and uncertain crew, without stars or compass to guide, passed safely into smooth and known waters, refitting and shipping such new crew as was necessary, and, having charted the unknown seas traversed, was by the military authorities passed over to the new civil government, in complete sailing condition.

The unthinking multitude look at a great building, and admire the work of the architect, which they see above ground. They do not see the foundations, they think nothing of the trials and labors there expended; and yet on the foundations being well laid depends all the endurance of the superstructure. It is so with the educational system of Porto Rico. The foundations were laid deep and

securely by the men who labored under the military government; and, indeed, so far not a single idea has been injected into the system which was not thought out by these men.

Educational Needs.

1. I would place instruction in agriculture and horticulture first. The people import most of the rice, codfish, flour, and beans, their staple food products. Gardens are nearly unknown, and vegetables in variety are difficult to obtain. They should be taught to raise their own food supplies on each plantation; and each peon should have his own garden, which should supplement the wild fruits which he now uses.

Beans should be more largely raised. They should be taught to kiln-dry maize and to make banana flour. Some means of keeping food supplies on hand for at least three months should be devised as a protection in case of hurricanes. For meat for the poor, fowls, goats, Belgian rabbits, and fish should be largely produced by themselves. Because travel is expensive, and because the people do not travel, and because few are able to read, *one* agricultural experiment station will not be sufficient. A garden of an acre or more should be established in every municipality,— not a garden in which children play at gardening, but one actually maintained for educational purposes. In this way the people would in time become familiar with a wider range of foods; and, when properly fed, they will be able to grasp new ideas. Besides instruction at the experiment stations there should be additional itinerant teachers of agriculture, horticulture, dairying, housekeeping, cooking, gardening, fruit-growing, bee-keeping, stock-raising, etc. The agricultural laborers are now in a state of chronic starvation, and will continue in this state until they produce their own food supplies. Hence this instruction stands first.

2. They need instruction in personal, domestic, and municipal hygiene and sanitation. At present the majority know nothing whatever of these things, and those who do know practise but little of them. Extreme poverty accounts in large measure for present conditions. Let the poverty be removed by improved agriculture, and then let the physician and the schoolmaster enforce decent living. The climatic conditions in Porto Rico are all right for correct living. Cooking must be taught; for among the

poor there is now practically none, and there are no appliances for cooking. Personal cleanliness must be taught. Hygiene has not yet been introduced into the schools as it should be. The Physiology taught in the schools of the States is practically of no value in the schools of Porto Rico at the present time. They need *hygiene*, pure and simple, undiluted with anatomy and physiology.

3. The people need instruction in the mechanic arts. Dr. V. S. Clark, in his Report on Education in Porto Rico, said, "We must teach them the dignity of labor even more than the dignity of learning." This is emphatically true, for to a considerable extent manual labor is beneath the dignity of a young Porto Rican. The writer has had a young native clerk educated in the United States who considered it beneath his position to carry a small handful of mail to the post-office. Another young man of good family said he would like to enter the American army, but he could not do so unless given a lieutenancy. At present, planting, clerking, the professions, teaching, and government employments are considered the only reputable occupations open to young men of good families.

They follow many trades, yet in few is the work well done. While manual training is good, it is believed that these people need specific instruction, that will enable them to earn a livelihood. Especially are household industries needed. They should be taught to make more and better panama hats, better baskets and in greater variety, canes, turned wooden ware, cocoanut mats to work up all the husks of this plant. Cotton should be raised and woven on this island to the extent of supplying the people with all their needed clothing. The coffee, tobacco, and cocoa should all be packed ready for the consumer. Not a single natural product should leave the island in a crude condition. All these things the people need to be taught, together with *thrift*, and *healthful and outdoor games*, for boys and girls alike. These things will probably best be taught in one or more institutions modelled on the plan of Tuskegee, Hampton, or Carlisle.

In his educational policy for our new possessions, Dr. W. T. Harris says: "There must be opportunity for all, not only to learn letters in school, but also to learn the trades and commerce and agriculture. That education should be such as to enable the inhabitants to develop the full resources of their islands."

At present there is but one priest in ten thousand persons, and

but one physician for five thousand. No more can be supported. But one child in ten is at school, but there is no money to educate any more. The masses are in a state of chronic starvation. It is useless to talk of higher education, or even of teaching all the children to merely read, until material conditions are improved. Put the people in the way of earning money, and they will, in Porto Rico as elsewhere, support preachers, physicians, and teachers. Dr. Harris says, "The highest ideal of a civilization is that of a civilization which is engaged constantly in elevating lower classes of people into participation of all that is good and reasonable, and perpetually increasing at the same time their self-activity."

In his letter of Feb. 26, 1899, Brigadier-general George W. Davis writes to the President: "The intention of the government under Spain was, apparently, to educate only a few of the children. The greatest number reported as attending school was one in fourteen. The great mass remained in ignorance, and this is probably what was desired." The general quotes a letter received by him from a governor of a West Indian island: "I would rather rejoice than otherwise over the small percentage of the natives able to read and write, and still more over their ignorance of civil and political rights; for you will more quickly reap fruits of a wise and judicious administration." The general continues: "This seems to have been the view taken by all governments, so far as I have been able to learn, of what is best and expedient for their tropical colonies. It seems to me hopeless to speedily reform these conditions amidst such surroundings. Even were the revenues adequate,— which they are not,— the hopelessness of the task prevents even an effort for relief in the densely populated colonies in these waters. So the poor people remain poor, their children without education; and so they must inevitably remain until a better industrial and social condition comes to the island."

"If to-day the means existed for supporting the ten thousand schools which would be required to accommodate the children, and if suitable school-rooms with equipment existed, I am of the opinion that the attendance would be meagre and the results unsatisfactory. The anæmic, half-starved, and often naked children would not or could not attend. But, suppose the attendance was full and universal, would the result be satisfactory? Would any solid advantage to society and to the children themselves result from the instruction? For six or more hours each day they would

be under the control of the instructors; and then they would return to their homes of squalor and filth, indecency and vice, their parents indifferent or unable to supply their natural cravings of hunger, and what the children had learned would make them unhappy and discontented. They would learn of wants that could not be supplied, and their miserable surroundings would be added horrors." (Report of General G. W. Davis, 1899.)

The greatest and densest ignorance is in the country. The boys and girls in the barrios should be reached as soon as possible by the schoolmaster and the primer. It is believed that double the number of rural schools could be opened by giving each rural school for the present a five-month session, each teacher holding two schools during the year. Again, expectant teachers could be employed in the barrios to teach the children to read, write, add, and subtract: this is better than nothing, and is a plan employed in the British colonies. Young native girls, capable of doing the work, can be secured for ten dollars per month. They would do just as good work, so far as they went, as the older teachers. After a few terms these girls would become regular teachers, as they do where the system is in operation.

The per capita cost of education is in Porto Rico too great. Under the Spanish government it was $9.60 per child per annum, or more than in Maine, Missouri, or most of the Southern States; and yet, at this rate, not a single school-house had been built, no books or appliances secured, and not more than one child in ten placed in school. This per capita cost has, under American control, been increased, and not diminished.

Another evil in the island is the great number of police maintained, and the enormous cost of the same. When Arecibo had 15 teachers, she had 70 police; and this was true over all the island. The insular government appropriates $200,000 for a police force of 739 men, which brings in no return whatever; court expenses are also enormously large, — for 1901 being $176,150, — considering the poverty of the people. These things should be changed.

The Outlook.

Porto Rico has the most promising population in the West Indies. The people are intelligent, quick to learn, anxious to master American methods and the English language. It is not known

to the writer that any other people, as a body, has been anxious to forget their mother tongue and the customs taught them in their childhood. But such seems to be the desire in Porto Rico, and it is the writer's belief that the island will become thoroughly American within a reasonable period.

To a people manifesting such a spirit as do the Porto Ricans, help should be extended. If it is our destiny finally to absorb all the islands in the West Indies, then the experiment of rapid Americanization should be tried; and this should be done by private enterprise. Porto Rico should have a school fund of five million dollars. Who will among American millionaires give it to redeem this beautiful island from the present incubus of ignorance and poverty? The insular public lands, now very small in amount, should be turned over to the insular government, to be sold and made the basis of a school fund. Possibly, a million dollars might be obtained in this way.

On the part of the Americans who are to aid the people in their educational work are needed "a greater elasticity of ideas, a broader sympathy, and a readiness, or at least a willingness, to understand the point of view of a people whose training, traditions, and system of law are essentially different from our own. Without such elasticity we shall never be able to solve satisfactorily the difficult problems of government which the extension of dominion over new peoples involves.

"If, in our contact with foreign civilization in the West Indies, we show a harsh, unbending spirit, this feeling of distrust will develop into a real hatred, which will effectually block the fulfilment of our mission on the American continent. Although the problem of government in the West Indies does not present great territorial importance, it involves all those political lessons which we must learn in order to meet all our political duties and obligations as the leading nation of the western hemisphere. The real significance of the extension of American dominion in the West Indies is not so much in the fact of territorial aggrandizement as in adaptation of our political ideas and standards which this expansion involves. It is this change that marks the real turning-point in our history. We are being put to the test which France has failed to meet, and in which England and Germany have been but partially successful. Nothing that we can do, save a humiliating confession of incapacity, can avoid the issue."

3. EDUCATION IN PORTO RICO.

BY PROFESSOR M. G. BRUMBAUGH, PH.D.

[Stenographic report of address delivered Friday morning, April 25.]

After civil government was established in Porto Rico, May 1, 1900, by an act of Congress of the United States, the educational work was assigned to a Commissioner of Education, who was authorized by that act to supervise education in Porto Rico, and to make reports to the United States Commissioner of Education as might from time to time be required. These were the limits that were placed upon the officer to be chosen by the President of the United States under that civil act. This office was thrust upon me through no choice of my own; and when in an interview with the President, now deceased, he asked me whether or not it would be possible for me to go to the island to organize the system of education under civil law, he made this remark, which I think has been the keynote of civil government in Porto Rico. He said "I wish to put the conscience of the American people into the islands of the sea"; and whatever has been done in Porto Rico under civil government from the educational side, I wish distinctly to have understood, is but a part of an organized effort by all the men who went under civil government to do the thing they were sent to do. I think I am not speaking beyond the limits of propriety when I add that President McKinley afterward said, in an interview in his home at Canton, that he had not sent to Porto Rico, under civil government, a single officer that had asked to go. So that there was in that group of men there a singular independence of influence, and an absolute freedom of choice given them in whatever they might do. Therefore, whatever was done in Porto Rico is the personal and individual officer's free, voluntary act; and he has no power to hide behind, and he has no one to blame and no one to restrain him in his work. So that civil government on that island stands for exactly what on its face it purported to be; namely, the attempt of a group of men sent down there against their own will to do an honest piece of work for those people.

I think one of the most interesting days we lived on the island was the day when the local legislature of Porto Rico first convened under civil government; for here was a people that for four hundred years had had no local participation in their government. True, for almost a generation, they had sent their representatives to the Cortes in Spain; and that group of delegates had in 1872 succeeded in manumitting the slaves on the island, so that we did not have any slavery, and really but the memory of it to cope with in the government of Porto Rico. It is true, also, that there was an autonomous form of government for Porto Rico; but no legislative body had ever been convened and no act had ever been passed in which the native Porto Rican himself had part. So that one of the first duties that fell to the civil government was to frame an election law. And it was with a great deal of temerity and hesitancy, I assure you, that three of us sat for two weeks to write out an election law for Porto Rico. There had been an election held under the military government, but that election was held with groups of officers of the United States Army in charge of the polls. We had no army back of us in Porto Rico; and so we were obliged to frame a law, and trust the electioneering to the hands of the two political factions that struggled for dominance in the affairs of the island. I remember that a man who had had large experience in Ohio politics came to me after I had been made a member of that committee, and said: "Have you thought just how you will guard the voter from the moment he leaves his home and goes on election day to the ballot-box to deposit his ballot and returns again to his home? Have you followed him step by step to see just how he will be safeguarded, in order that he may honestly vote and unrestrainedly vote?" I said, "No, I would like to have your opinion on that"; and he said, "I will write down a few things you had better do." And he made 106 suggestions to be incorporated into the law to make it absolutely sure that this man who went out from his shack to vote should do so without let or hindrance from any one.

Under the law a legislature was chosen. It was made up of thirty-five members, thirty-four of whom were native Porto Ricans and one an American attorney; and this legislative body, constituting the lower house, or the House of Delegates in Porto Rico, had for its complementary branch of legislature an Executive Council made up of six Americans, who constitute the cabinet of the

governor, and five Porto Ricans, appointed also by the President of the United States, making in all eleven members who for legislative purposes sit as a Senate.

This body met on the first day of December in the year 1900, to begin for the first time in the history of this people self-government; and some of the most interesting things that we had afterward to do first manifested themselves in this first legislature of the island. I shall never forget that first day, when we marched down the streets of San Juan to the theatre, where, perhaps, sixteen hundred people had crowded all the galleries and pressed in on every side all over the floor; and, when the different members of the legislature were crowded upon the platform and the governor arrived and entered the room, all that great multitude stood in respectful silence. Then he began to read the first message from a civil governor to the people of Porto Rico. He read a paragraph of his address, and sat down. His interpreter put that into Spanish, so that the audience would get the message word by word as it went along. And their responses to the Spanish paragraphs showed there were many people in Porto Rico who began, at least in part, to understand the significance of civil goverment. And when the address was over, and the band began to play the "Star-spangled Banner," and the men rose to their feet, the tears streaming down their faces, one could not help but feel that these were sacred days in the life of those people, who now for the first time were to be given an opportunity to share the burdens of their government and to develop within themselves the sense of self-respect and self-restraint that is due every individual who is by the law intrusted with a participation in governmental things.

One of the first difficulties the civil government had to encounter was the difficulty of impressing upon the minds of these people the fact that they were now no longer dominated by a power that was autocratic, but that they were in very truth part of a great democratic machinery. The first bill introduced into the legislature will illustrate better than any other thing I could tell you just how difficult that was. During the formation of the civil government we were always told by prominent men all over the island that one of the things that Porto Rico would surely ask of the first legislature was the right of trial by jury. Such a right had not been known in the island in all its history. So the first bill introduced

into the Senate was known as the bill to create trial by jury; and it passed the Senate unanimously and went over to the House, and, when it was read by the clerk of the House, it was voted down unanimously. We were dumbfounded, and on meeting some of the members of the House that evening, we said: "What is the trouble with this bill? Are you opposed to trial by jury?" "On the contrary," they said, "we want it very much." We said, "Then why did you vote against it?" To which they replied, "We can never have trial by jury if it is to be brought to us in the language of that bill." The bill had been drawn by the man who is now the governor of Porto Rico, and it seemed to us to be fair and right. And then they said: "It says in one place that, when a man is tried for certain crimes, he shall *demand* of the judge trial by jury. We never demand anything of our judges: we beg; and we cannot vote for a law that shall demand anything of a superior officer. We entreat our officers; we never demand anything of them." They could not understand the matter; and it was only after a great deal of persuasion and explanation that it gradually came to their minds that a citizen of a democratic government had a right to demand and order and control his officer, and to make his officer act within the limitations of a law that even he himself must feel. When they understood that, they took up the bill, and passed it unanimously. So we have trial by jury now in Porto Rico in all our principal courts of justice on the island. This illustrates one of the things that we had constantly to rub against in the introduction of civil institutions on the island,—the firmly fixed prejudices and traditions of a people who had for four hundred years been governed, and who themselves never had had a part in government.

I remember that one of the Porto Ricans, who was a member of the military board of education, walking down one day with me to the palace, said, "I think I shall not go in there." "Why not?" "I have never been in that palace," he said: "that was only for Spaniards. The Porto Ricans were never allowed there. I do not care to greet the governor, because I suspect he will not care to see me." I took him by the arm and led him in; and he has been there many and many a time since, because it came to him in a practical way that the government that was now established in the island was wholly different from the monarchical form that impressed itself upon them from the Spanish point of view.

In the little city of Yauco, at an educational meeting during the first year of civil government, we addressed not only a large group of citizens thronging the principal room in the city, but also an overflow meeting on the public plaza; and I remember that one Porto Rican teacher, who had been an instructor under the Spanish régime, insisted on being heard after the addresses had been made by those who had been assigned tasks on the programme, and at first it seemed unwise on the part of the supervisor, and he denied the man the right to speak. When it was called to my attention, I said: "Let him speak. Surely, we can take care of any sentiment he may utter." This is the little speech he made in Spanish: "I wish to stand and speak to my fellow-citizens on a platform that is draped with the American flag; for I have never before been allowed to speak with that flag before my eyes, the flag which my father hid in his garret, and which is now, thank God, floating over every school-house in Porto Rico." He represents a large group of teachers, school directors, and citizens on the island, numbering hundreds of thousands, who have in those brief steps of American occupation come to understand something of the spirit of American free public schools. These men are trying with their full force and strength to support the work that has been done on the island.

You may perhaps — naturally, I think, you would this morning — infer that there must have been some difficulty in the change to the new order of things in Porto Rico and I think the ex-governor must have shared that feeling, because a year ago, just before he contemplated returning to the United States in June, he called his cabinet together, and said, "Now let us talk over the difficulties that are likely to face you in my absence, and agree upon whatever policy seems wise among us in the enforcement of these measures while I am away." One after another of the things that were pending came before the cabinet and were settled; and then he said, "Now, Mr. Brumbaugh, are you not going to have some trouble when you introduce the new school law passed by the legislature?" I said: "I think not, Governor Allen. The truth is that law has been in force for three months." He said, "I never found it out." "You never will," I said. The fact of the matter is that the change was made in a day from the one school law to the other, and nobody knew that the change had been made save only those who were immediately concerned in the transition and

who had been prepared for it in advance; and the schools were not delayed a moment in making the transition over to what is now the school law and the school procedure in Porto Rico.

I wish especially this morning to speak of the sentiment for American institutions that civil government has developed on the island. We have tried, not only in the department of education, but in every department of the civil government, to impress American ideals and American integrity upon those people. We have had some difficulties: things have not always gone as they might have gone; but I do want to say for the Porto Rican people that I believe they are as earnest and as kindly-hearted and as good a people as many another group of people under the flag that enjoy a higher form of territorial recognition to-day. When the army of the United States was withdrawn, these people were left to their own resources. They were left for their own protection to the mercy of a little over five hundred of their own number, known as the insular police and captained by one American officer, whose sole business it was to drill them until they became an efficient machinery for the protection of life and property on the island. Those five hundred Porto Ricans — insular policemen — took the place of the whole force of the American army, and they maintained peace and order, and enforced the law with commendable vigor everywhere on that island; and to-day life is as safe and property as secure and the integrity of the law as well preserved in Porto Rico as it is in your own city of Washington. That has been done by themselves; and it is a touch of what can be done with those people if they are handled kindly and humanely and reasonably by those who have charge of them.

It has already been pointed out to you that one school-house was erected in Porto Rico before civil government was established, but fire took it away on the first of July, 1900; and, when civil government began its operations on the island, there was not a single school-house erected for school purposes. The schools were held in rented buildings. The schools for both boys and girls were held in little shacks, in cheap buildings, that had been rented and prepared under the military government; and something over six hundred schools had been established in this way.

The Department of Education had turned over to it a special fund of $200,000. When that money came into the hands of the Commissioner of Education, it was determined, after consul-

tation with his associates in the government, that not one dollar of it should be expended for the purchase of school sites in Porto Rico; that, on the contrary, no school-house would be erected by the government in any municipality or barrio that did not give voluntarily the land for it. An acre of ground was required in the towns, and in many cases in the barrios two and even three acres of land. I will state, as an indication of the public sentiment in favor of public education in Porto Rico, that not any school board in the entire island to whom an appeal was made for land failed to give all the land we wanted; and we never had to buy a single plot of land for school purposes on the island, except a plot of ground for the new normal school (which is now completed) at the town of Rio Piedras. There was a sentiment among the people that prompted them to give the best ground,—ground right in the heart of the city. "You can have the plaza for your school-house: put your school-house beside the church or the cathedral." Of course, we refused, because the plaza is the breathing-place: it is the place where the health and the social life of the people are conserved in the evening hours So the school-house did not go to the plaza; but it has always gone in a convenient place. To-day there are over 50 school-houses completed in Porto Rico, and about 15,000 children of the public schools are in these new school-houses, sitting on American school furniture and with all the surroundings that you find in a well-reg ulated community here in the United States of America.

Of this number of school buildings some twenty odd are agricultural schools, around which there is at least one acre, and in many cases two or three acres of land. These schools are provided not only with books, but with agricultural tools, and the child spends one-half of each day working in the soil of Porto Rico, and the other half of it studying the simple rudiments of English and of reading and writing and arithmetic. When on this little plot of ground he plants the seed and cultivates that to its maturity, and takes home the vegetable that he has raised,—whether it be radishes, or lettuce, or beans, or tomatoes, or melons, or what not,—and it goes to the mountain shack, the home of his parents, and the whole family group get the product of that soil into their stomachs, they begin to understand education in an entirely new way in Porto Rico. The people are beginning to understand that the soil of that island, densely populated as it is, is so

absolutely rich that it is possible to produce sevenfold agricultural returns with the same population they now have when they understand the scientific aspects of the work.

I wish you could have been some time ago to the dedication of one of these schools. It was three miles out on the road, and the teacher of the city school, the day before, asked whether the children of the barrios could attend the dedication of the agricultural school. I replied: "Yes, if you provide a means of transportation. It would not be fair to compel the children — some three hundred children — to walk three miles in the tropical heat and back, simply to be at the dedication of a school-house." He said he would see to that. So, when I came to the city the next day, the schools were closed; and I said, "Where are the children?" "They have gone to the dedication," he replied. "How have they gone?" "You will see," he said. So we started to the school; and, as we crossed one of the hills, there they were moving in a line down the road. They were in ox-carts, four oxen to a cart, and these forty or fifty children stacked in the carts so thick and so tight they could not sit down nor could they fall out. They each had a flag, and were singing the American national airs in the English language. That scene was patriotic and soul-stirring. The next day that school opened, and the announcement was made that the first fifty children presenting themselves would be enrolled, and that all others who presented themselves would be placed upon the waiting list. After we had enrolled all, we had 126 children on the waiting list for one school in Porto Rico. We have in many schools in Porto Rico a large waiting list. There is not anywhere to-day under the flag a larger willingness on the part of the poor people of the country to co-operate with education, to make sacrifices to send their children, and to support the public school system, than we have now in this little island.

Let me state another fact. I remember once, when we went to the little school at Juncos,— a school of five grades,— there was a boy who never would turn his face away from me. Wherever I went in the room, he always faced me. So I said to the teacher: "What is the matter with that youngster? He is the most circumspect fellow I ever saw." "You watch that boy when I dismiss the school," he said; and the boy in going out showed why he always kept his face to me. All the shirt he had was on the front of him! He did not want me to see his bare

back. He had said: "Now this is the only shirt I have, and I want to be here when the officer comes. Shall I come with this shirt?" And the teacher said: "I think you dare come. I do not believe the commissioner would care." He has another shirt now.

I want distinctly to make this statement: every child that comes to the public school in Porto Rico comes decently clothed, and generally in clean clothes. The little girls wear always little dresses to their knees. True, indeed, they come sometimes barefooted and barelegged and bareheaded. The boys wear their little shirts and trousers, and these are clean; and the school is as clean and as sweet and as decent a place to be in as you will find anywhere in this country. I want to say that they are not a filthy people in the school: the public school has taught the mothers and has taught the home many cleanly ideas.

At a rural school I noticed that after going out of school the children took off their shoes and stockings and put them under their arms; and I said, "Why is that?" and I was told that their parents earned just enough to give them one pair of shoes and one pair of stockings. So the children came barefooted, carrying their shoes and stockings under their arms, and they sat by the roadside and put on their shoes and stockings before coming into school; and, when the school was dismissed they took them off, and carried them home to save them. This is a struggle of a poor people for an education under conditions that are so new to them that they deserve only the kindest sympathy and the most charitable judgment in that struggle.

Another thing: In all districts, notably this year, at the opening of the schools in last September, we suggested to the supervisor who had charge of the district school that he whitewash the school-house and put a little fence around it, and plant a form of cactus,— a peculiar sort of plant,— that does not depend upon the soil, but upon the air, for its life. And then it was suggested that they might take some flower-seeds, and plant them. Peter Henderson and all these great flower-seed men all sent down a great many seeds, and they were put in little beds by the children. So the school soon began to be a bower of beauty. It blossomed into roses, and it burst into all kinds of beautiful tropical plants that those children had brought there. There are a great many children in these schools who are beginning to influence their

homes; and you notice, on going out of the school, that the shacks of the poor people are whitewashed and that flowers are growing before the door where before they did not grow. And I think you will easily see how these people in the community are influenced by the school.

There has been a gain of 66 per cent. in the schools in Porto Rico in the last year and a half. These schools are attended by males and females,— 50,000 children,— and they are taught by 126 American teachers and almost seven times as many Porto Rican teachers. I am to speak not only of the present condition, but also of the needs of these schools; and so I shall raise this question, "Where do you get teachers for these schools in Porto Rico?" Literally, the answer is, "We make them." 126 have been brought down since the beginning of the American occupation of the island to teach in the schools; and these are just enough to put in each of the towns and villages a teacher of the English language, and the rest of the work is being done by the native teachers of the island. After the sifting and the reduction of immoral and incompetent teachers under the Spanish order, there was not a sufficient number of teachers on the island to open all the schools that the civil government wished to establish. So a normal school was established at San Juan. This was a summer school, to continue for ten weeks; and, when it was projected, we were told that it would be absolutely impossible to get any number of pupils there and to do anything like serious normal work, that there would not be a large enough number to make it worth while. We issued a circular calling attention to the school and appealing to the young men and women of the island; and on the day of the opening of that school, which was on the 14th of July of last year, we were obliged to go down to the theatre of San Juan to open the school. By count there were over 1,600 people in the theatre at the opening of that summer session of the normal school in Porto Rico. The next morning we enrolled 806 pupils, who came there to study ten weeks to prepare to teach in the schools of that island,— almost as many pupils as there had been schools in the island throughout the year before; and, in one district that had 59 teachers, 58 of them came to that normal school, and the other one came to the United States, and studied here in our technical schools, in order to go back as a teacher of technical science in the schools there. That was the spirit that animated them. I know

of seven boys who walked every morning from Rio Piedras and back to that town in the evening, a distance of nearly seven miles, and slept at night on the floor of the Baptist Mission Church, and begged the food along the roadside to support them through ten weeks, in order that they might obtain an education and fit themselves to teach in the schools of that island. We did not take everybody who came. It was different from the old days when they received in advance the questions for examination. We had a standard, and took only those who were earnest and had a desire to do something.

We adopted a rule that those who got books should deposit a dollar at the beginning of the school, and return the books at the end of the school and get their dollar back; and one of the pupils presented a dollar with a hole punched in it, and said: "This is the only dollar I have. This dollar bears the date 1898, the year of the American occupation of our island; and," said he, "when we earned money enough in our home to secure a dollar of that date, we punched a hole through it and put a ribbon in the hole and tied that dollar around my baby brother's neck, because we wanted him to carry this dollar of the year of our deliverance. And, when it was decided that I should go down to the normal school, my mother took that dollar and asked me to see you and ask you to please take that dollar for ten weeks, and I will return the books and take it back." That was the spirit in which these people came to this school. That boy slept a part of those ten weeks on a marble floor, with nothing but the books he had received from the government for a pillow, and received his food by the charity of his friends who were kind enough to aid him; and after the ten weeks he passed an examination and received a rural certificate, and took the dollar back and hung it at his baby brother's neck, and he teaches in the rural schools of the island. This is the type of the kind of people who are coming up in Porto Rico.

I have not spoken of the dominant life in the island. I have not spoken of that small percentage — the 10 per cent. — of the white life of the island that constitutes the culture and wealth of the island, those who have gone out of the island for their education and who are the nucleus of Spanish civilization, with Spanish ancestors abroad. Of these I do not speak, because they have a civilization that is unique within itself, and which is perhaps as far advanced as our own; but I speak of these poor people, to whom it

seemed as if the civil government had come as a veritable God-send to help them see the light and to come toward it.

When the governor and two or three of his cabinet went over in the south-eastern part of the island last November, we visited the little town of Muanabo, which was the first town to receive the horrors of the cyclone of 1898. Its church was destroyed, its plaza was ruined, its trees were rooted up; and the people were in a dejected and wretched condition. The Ayuntamiento were there to receive us; and the governor said, "If you have any requests, make them known"; and the Alcalde, who is the mayor of the town, replied, "We have thought over this thing, and we have written out all the things, we think, we want." When this paper was read, it contained three requests. "We want, in the first place, a road." And, if you have ever been to Muanabo, you will know why they wanted a road. The road from Yabucoa to Patillas is one of the most dangerous and the most difficult over which I have travelled. "In the second place, we want a school-house." If you could have been in the little rooms in the building that had been blown down, and have seen the three grades in that little building, with the children crowded in those little miserable rooms, trying to learn, you would have understood why they wanted, in the second place, a school-house. "And, in the third place," said this paper, "we want a teacher of the English language. Give us a road, a school-house, and a teacher of the English language; and that is all we want. We will take care of ourselves."

From an extended trip over the island in the last six months and from daily contact with hundreds — I think I may almost say thousands — of the people through my agents on the island, I do not hesitate to say that there is no present personal suffering on the island of Porto Rico that is not due to the personal indifference of the people; that the people have enough to do, if they make the least possible exertion to obtain it. Food is not scarce on the island, and the island is in a prosperous condition. It is paying its taxes with more system and regularity under the civil government than the city of Philadelphia to-day is paying its taxes.

This is not exactly the form of address that I had chosen to deliver here this morning, but I have simply injected these phases of the distinctive work that we have tried to do there; and I close by saying these words to you,— that the ambition of the people of that island is to have the flag of their island taken

down and the flag of the United States to be their flag for all time. In other words, they want the star of the island of the sea to rise and nestle in the folds of the flag of the great republic; and they are learning that the only way that that can be accomplished is through education,— that, in fact, the door to statehood in the Federal Union is the door of the free public school.

4. ART AND THE TOILERS.

A COLLOQUY.

BY REV. FRANK SEWALL, D.D., OF WASHINGTON, D.C.

[Read Friday morning, April 25.]

"The toilers go on, broken at the heart.
They send the spell of beauty on all lands:
But what avail? the builders have no part,
No share in all the glory of their hands."

Edwin Markham.

Howard. I have been reading a little sketch by François Coppée, called "At the Table." How strangely a little thing like that will cling to you! You read it for a ten minutes' pastime, and it holds onto you for days.

Cornell. I don't find that the case with my French reading. It comes and goes. It slips quickly over the surface, or passes before my sight with a flash and is gone. I wonder that you find anything so impressive in these Parisians.

Howard. I know that is the way with most of them. They are called "impressionists" because they do not impress. They give you only a passing sensation, strong it may be, very strong, indeed,—some of them; but, still, it does not strike deep into one. But with Coppée, I must confess, it is different. There is a heart in him, and in a most subtle and keen way he strikes home to one's feelings. The trouble with him is, however, that he usually ends with putting some nice ethical question by which you find your mind is quite wrought up. He does not answer it; and, for the life of you, you can't answer it yourself. Here, for instance, is this little trifle of a sketch: we have a fine dinner party, with every perfection of elegant persons and surroundings, the choicest and rarest of *menus*, the costliest plate and crystal, the daintiest of linen, the odor of beautiful flowers; and in the company sits one, the Dreamer, who despite the beauty and festivity of the occasion is made sad by the haunting thought —

Cornell. Oh, yes! I know it all: he is thinking of the other

side, or "how the other half live," and is allowing his appetite to be disturbed by the reflection that the people in the alleys are not all eating from genuine plate and crystal!

Howard. No, it isn't that quite. He does not go so far as to say what they ought to eat from or even what they ought to eat: he only makes you think of them,— of a great lowest stratum of human beings to whose incessant toil, uncheered by any ray of hope or ambition, or any taste of more than the mere animal side of life, almost every feature of this elegance and luxury may be traced for its source.

Cornell. Yes! and then, I suppose, comes the usual sweeping condemnation of the upper classes as a set of people living grossly and selfishly on the ill-paid, if not stolen, products of labor.

Howard. No: on the contrary, he is careful to describe the company as being no gathering of gourmands to feast on an expensive bill of fare, or engage in scandalous gossip, or observe what one another wears. It is humanity at its best that is assembled at this table. The minds and wits are of even finer grain than the materials and the setting of the feast. And the Dreamer, of course, only represents its reflective side —

Cornell. Yes, the "skeleton in the closet," or the "Death at the Banquet," which has been handled so often by the moralists. For my part, I never can find much satisfaction in that kind of sentimental adjustment of things,— as if people who are enjoying the bounties of life are doing so, as a matter of course, unfairly, and so, to make amends, must throw in a just amount of misery, if it only be by way of vivid imagination or in wishing it were otherwise. It seems to me that, for those who are blessed with an abundance of the good things of the world, there is but one of two things to do,— either go and "give one-half of your goods to the poor," and done with it, and get along as best you can with the rest, or else keep it all, and enjoy it for what it is worth, including the luxury of occasional benefactions, as one feels disposed. But as for this keeping it all ourselves, and dealing out to the poor certain measures of regret, or souring our feasts with the thought that they have none,— I can't see how any good is coming from this. What does your Dreamer say?

Howard. That is the very mischief I was speaking of,— the peculiar art of Coppée. This Dreamer does not answer any ques-

tion, does not even propound one: he merely sets you thinking. He seems to me to represent not the morbid sentimentality of a degenerated wealthy class, but rather the sympathy of humanity at its best and the reflection which that sympathy must awaken. His is no lawless outcry against the rich as such, nor against any exclusive privileges that riches confer. "Why," asks the Dreamer, as he looks about the brilliant board, "should not these members of the élite enjoy themselves?" But at the close of the sketch,— I have copied his very words in my note-book,— here they are: ". . . Yes, they are within their rights. But do they know, do they understand, that their luxury is made from many miseries? Do they think of it sometimes? *Do* they think of it?" And you see it is just this thought of a situation for which no relief, no solution, is offered, that sticks by one so.

Cornell. I suppose he does not really propose to be satisfied with the readers' merely "thinking of it." He evidently means that the one whose sympathies are really roused will bestir himself to help matters in some way; and so, I say, it comes back to the old solution or none.

Howard. What solution do you mean?

Cornell. The "giving half of my goods to the poor." An equal distribution of wealth among all the people!

Howard. Of whose wealth?

Cornell. Well, I suppose the wealth of those who have either earned it or have inherited the earnings of others.

Howard. And that means, of course, making it possible still for the idlers to live upon the products of those who labor. For, if wealth be not the special privilege of a certain class, but, rather, something assured to all by public decree, it must be that a large class will be supported in indolence by the labor of others, since wealth is, at last, the product of labor only. This attractive way of being supported would doubtless increase the number of the indolent, and would so largely reduce the average amount of wealth which even those earning it could enjoy that there would be little incentive to labor.

Cornell. But my theory would admit of no idlers at all. A universal distribution of wealth means, according to it, a universal distribution of labor!

Howard. Yes, in theory; but in practice such a distribution of labor can be brought about only by a strong compelling power,

only such as an absolute despotism can wield. As a matter of fact, mere productive labor, in the sense of manual labór, without conservative, economic, and administrative labor, would not yield capital. The office of preserving, investing, and administering capital seems so unlike the work of the manual laborer, that it is difficult to classify them both as labor. But, if we think of labor as meaning only productive labor, it is easy to see that literally to distribute this universally would be not a means of promoting equality of wealth, but rather of destroying wealth altogether. Men might still live from hand to mouth, as cattle do from the earth.

Cornell. I suppose, if all labored, and if each can produce more than enough for his immediate bodily need, then this combined surplus would be a kind of universal capital, in which they would all have an equal share.

Howard. Yes, but that would not be wealth. The mere gross accumulation of food supply is not wealth to a man who has eaten enough, and who will always have enough to eat. It only becomes wealth to him when there are others who are hungry and without food. And so, to create wealth, even supposing all are fed, there must come into play two factors which are not implied at all in mere productive labor. These are the preservation of the surplus in the form of capital and the converting of it into wealth.

Cornell. By what means?

Howard. By the creation of wants. If it is true that the surplus becomes wealth only as there is a demand for it, after the mere bodily wants are met, there must be created new wants if we would turn our surplus to account.

Cornell. Then the way to relieving want among the poor is, according to your theory, to create new wants.

Howard. Yes, want of a new or higher kind. I have heard a young worker in social economics say, as the result of his efforts to supply the wants of the poor, he had found, as a rule, that they suffered more from the want of a want than from anything else. Their poverty and wretchedness consists far more in their want of an incentive, an ambition, a desire for something human, than in any mere bodily privation. Their physical poverty is often, too, the consequence mainly of the lack of an end for living.

Cornell. I am afraid to examine too logically this your new definition of poverty,— this want of a want,— or, rather, your

remedy for it; for, I fear, we should find the want increasing by a tremendous ratio instead of diminishing. But what would you call your remedy?

Howard. The remedy would seem to lie in but one thing, whatever name you give it. That thing is the realization of life, the getting out of this human existence of ours all there is stowed away in it, especially all its richest deposits. "Culture," probably, is as good a name as we can find for this business of the realization of life. Of course, religion is a part — I will not say here how large a part — of this *culture;* but that we are not talking of now. The main thing is to make real all the possibilities of that great mystery,— a human life. And, therefore, as I was saying, administration and culture are the two factors which must be added to that of productive labor if we would increase wealth and distribute it more evenly. But these two offices are incompatible with the avocation of the day laborer. Either, therefore, the day laborer must consent to the existence of what is called the leisure class,— a class of seeming idlers because unoccupied with their toil and devoted to the elegancies of living,— or else they must resign themselves to remaining perpetually shut out from the inner and truer enjoyments of living themselves.

Cornell. But, if the laboring classes are all to attain to these "inner and truer enjoyments of living" which the rich possess, and which imply a large amount of so-called leisure, where, then, are the laborers?

Howard. You mistook my meaning. By this higher realization of life by the poor I did not mean their ceasing to be laborers, but their ceasing to be deprived of the just reward of their labor. I meant that culture and true use of capital by the richer classes would enable these to return to the laborer that great debt forever owing him, but which mere money can never pay.

Cornell. And what is that?

Howard. It is, of course, the highest value that his labor has produced.

Cornell. You mean in money.

Howard. No, I mean in living. Whatever is that highest and sweetest and noblest form of delight which wealth may furnish but the wealth at whose source lie the days and years of hard, grimy toil. This, and nothing less than this, rightfully belongs to the laborer, and should be returned to him. This

is the usury, the only adequate usury, that capital and luxury and ease of circumstance with their possible leisure and culture can return to the laborer, together with the pittance of his own money earnings. This is the usury that is or should be the fair equivalent of all the seeming privileges of that leisure class, of all the silent and seemingly painless accumulation of capital that the rich enjoy.

Cornell. But I thought the laboring classes were, by the very necessities of their station, precluded from these refinements of culture? Was not that your argument?

Howard. They are precluded from the arts and studies and the mental anxieties and labor that enter into this culture, but not from the fruition itself. That, the purest and highest result, should be theirs without any of the toil and the anguish of soul that has gone to produce it. It is only so that the account is justly balanced.

I would give them that wealth into which the raw money value of labor has been transformed by the long processes of human culture. I would not stop at any half-way stage of the appreciation of their dues. It is all very well to see that the laboring classes are well housed and fed and clothed. We may do that, and without any sanctimonious affectations of humanity, and with as little of the patronizing of the charity visitor as possible. That is, after all, only the duty of self-preservation which the municipality owes itself, to provide sanitary conditions of living and to see that the money wage should always suffice to meet the physical needs of the wage-earner. When all this is done, however, society still withholds its just dues from the toiler in the field and mill and workshop. Nor would it pay it by carrying bodily into their houses the rich viands and the silver and crystal from the tables of the wealthy, or filling their wardrobes with expensive clothing, — least of all, by supporting them in idleness, and turning their humming and stirring houses into the dreary corridors of the almshouse.

Cornell. No! Nor by enabling them to bet on the races, or to sink fortunes in following out some eccentricity of taste or fancy. I admit all this. But what is this that you would give them at first hand? I know what you are going to say,— that one boon that all men have sought for from the beginning, and will seek for to the end,— happiness! And I suppose it is next to impossible

to get over the delusion that somehow money is happiness, and that, when we are talking of giving happiness to the toiling classes, we are insincere, unless we mean giving them money. I confess, I cannot wholly get over that delusion myself; and that was the difficulty, you know, I started out with. And yet I know well enough now, in real experience, this is not so. I know that many who are rich are anything but happy, and that the homes of the poor are often bright with a happiness that the rich would gladly give thousands to buy if wealth could buy it. But with this sort of happiness, you know,— that is, the kind of happiness that wealth cannot buy,— you are getting into the depths of ethics and religion, and I am perfectly well aware that the majority of people, nowadays at least, think life too short to allow of our examining questions along these deep lines. And so, as a short cut to the attainment of the deserved result, the average man will say, as he hurries to his office or is wearied with the persistence of the solicitors for the poor, "How much shall I subscribe?"

Howard. You are quite right in thinking that there is an ethical and religious side to the matter of happiness which practical men think they have no time to enter into, when appealed to to do something to make brighter and sweeter the life of the day-laborer. Too often one gives money, which goes far astray from the production of happiness. But why is it necessary to run this risk? Why not give them the thing itself, that which — after love and religion, the two sources of satisfaction which, as you have intimated, lie outside of the question of human economics — every human soul really craves, the one thing, save love itself, that forever has given joy and forever will give joy to human hearts, regardless of social condition, regardless of any intricate questions of morals and religion. I mean beauty,— the beauty that is at once the highest gift and the one great obligation of art. Is not this, after all, the great debt that wealth and culture forever owe to the toiling masses that have made the creations of art possible?

Cornell. You mean by giving the toiling classes beautiful works of art to admire in public galleries, and so on? or do you mean their training in art schools?

Howard. Neither, precisely. I do not know that the Greeks had art galleries; and I am sure the common people who climbed the Acropolis to worship before the great Athene, and lifted their

eyes to that procession of divine forms around the frieze of the Parthenon, never saw the interior of an art school. Art galleries, like libraries, are a part of the school-room of the world. They are not the play-room, still less the temple.

Cornell. Then you do not mean art as an educator?

Howard. No, I mean art as a delight, as a means of constantly feeding the soul's hunger for beauty. There is something about the ordinary public art gallery, with its crowded rooms of pictures or statues, suggestive more of a storeroom than a banquet. Like an encyclopædia or a dictionary, it is more for information than for calm and restful delight. For this delight we should see beautiful things harmoniously placed, and where they strike the vision naturally and do not have to be sought for. The art I mean should greet the millman, the miner, and the foundry hand, and be music on his way to and from his daily toil. It should adorn the waysides and squares of the city; should be before the toiler's eyes in statue or fountain where he most likes to stretch himself to rest in the public park. It should tower above him in great triumphal arches over the chief highways of the people. Especially it should adorn the porticos and façades of all government buildings, making the toiler feel that the State is his friend, and not his oppressor. But it should not be content with this use of sculpture in exterior adornment. Besides erecting galleries as places for study, it should cover the walls and ceilings of the interiors of great public offices, courts, churches, and railway stations with paintings in which with pleasing form and color there should come suggestions of high and beautiful sentiments and actions. These should be a great school of patriotism and morals, in which unconsciously the masses of the people would imbibe the most precious elements of human life. The beautiful would come to them not in the form of a task, but of a constant refreshment and delight.

Cornell. It is pleasant to think of the masses of the people enjoying art in the way you describe. It is quite different, to be sure, from being lured into reading-rooms to sit under a gaslight poring over picture-papers and the columns of the sensational newspaper, or even from becoming versed in the handling of a card catalogue in a big public library. All these direct educational facilities are invaluable, of course, as means of public culture; but, as direct sources of that delight which culture is intended to furnish, I see that they are not to be compared with the beautiful ob-

jects themselves that you speak of. But must not these provisions of the beautiful for the laboring classes be confined to the large cities, where there is sufficient wealth and an educated public spirit?

Howard. Not necessarily. The need seems more deplorable in our isolated mountain clearings and prairie farms and among the mining and foundry towns than in the cities, where the dense crowd of humanity presents a constant change of life and color that in itself is picturesque. But in the solitude and monotony of the isolated village, the cross-roads settlement, or the miners' camp, without beautiful objects to lift the mind in admiration, the soul is left to consume itself in morbid introspection and restless, indefinable longings. These people, and others even farther remote from cities, should be reached by some method for feeding the hunger of their natures for the beautiful. Besides its supreme mission, I do not know of anything holier for the Church to do than to infuse through art an element of beauty into the lives of these lonely communities which its religious mission compels it to seek out. Instead of leaving this element of beauty, in their chapels, their hymn-singing, their houses and gardens and furniture, to grow on the crude and mean sustenance offered by the uneducated masses, misled too often by vulgar taste and the overbearing influence of some man or woman with money but without culture, why should not the Church herself begin with lessons of beauty, and make the ministry of art a part of her sacred mission?

I recall an experience of mine in a little mountain village near Lugano in Italy. It was about as dreary and forlorn an accumulation of human dwellings as one could imagine. Both houses and streets were built of an ugly black stone. Through the open doorways one saw only dark, cavern-like interiors, reminding one of the cliff-dwellers. But in the midst of these gloomy abodes, so void of everything like grace or adornment or cheer, there rose in a little square, on a terrace approached by a flight of steps shady in some place at every hour of the day, a building with pure white walls, and windows and niches and porticos of classic beauty. Inside all was aglow with rich old paintings, brilliant tapestries, votive offerings, statuary, candelabra, and flowers. Ceiling and walls were alive with the floating forms of cherubs, angels, and saints; and everywhere was silence and the clean odor of incense. I saw young girls and little children coming and going, saying

their little prayers, and gazing enraptured at the pictures of the saints or the pretty cherubs poised in the heights of the ceiling; while old women, bent double and toothless, crouched in the cool, shady corners, telling their beads, and taking in a contented survey of the life of the community as it revealed itself here in its common centre from hour to hour. Outside on the portico and down the steps the boys and young men were playing and chatting. The æsthetic problem was here revealed in an instant. The beautiful, for which this race of old Hellenic stock is so hungry, was not in their homes. As if too holy to be shut up there, they had brought it all as a sacrifice to the common good, to the central home of all, the poor community's one palace of æsthetic delight and refreshment, their one *basilika*, or house of the king,— their church. This was their picture gallery, their park, their palace, library, drawing room, theatre, opera house, school, and house of prayer all in one. Now, leaving the religious question entirely aside, here was an instance of the return which the art and culture bred for centuries into the ruling classes in Church and State had made to a class of people powerless in procuring such things for themselves. What has our Protestant American civilization, religious or otherwise, to show as the counterpart to this in certain of our districts, say among the miners' camps, or in a coal or iron region, or among the mountaineers of our Southern States?

Cornell. But many, you know, object to this paternalism of the higher classes, whether Church or State, on the principle that it is better that people should develop these things by themselves, and so in freedom, although it takes longer.

Howard. Yes, I know; and I think I appreciate as fully as any the importance of the principle of self-advancement. But I do not see that in reality this lessens the obligations of art and wealth: it rather increases them. What I contend is not that the endeavor of the lower classes to rise is not a legitimate endeavor, or that this endeavor will ever cease, but that, nevertheless, there *will always be a class lowest down in the ranks of toil* who, because they are at the sources of all production and of all wealth, are entitled to the highest outcome of that wealth, and this, too, without waiting until they themselves are lifted into the ranks of the cultured ones. God gives the beauty of the sunset and the flowers to the humblest laborer without waiting for him to reach the rank of beauty-makers. The question is, What, besides religion,— the greatest human need

— is the most genuine joy, above the plane of mere animal gratification, that we can impart to the toiling masses directly? I hold that this is the joy of the beautiful,— the beautiful in form, in color, in sound, in character. And I insist that the so-called privileged classes are not making an even balance of accounts with those lower down by putting them off with mere high wages and other provisions for physical comfort, or even with the means of higher culture, such as libraries, reading-rooms, lectures, and the like, which to many are only a kind of mild medicine at the best, so long as that rarest quintessence of human luxury, the love of the beautiful and its gratification in art, is not showered lavishly upon the great masses of the toilers, so that, not merely at some future day when toil shall cease, but now, through the very sweat of their brows, their eyes shall look out with a smile, and not a frown, upon the world. It is well enough to talk of the paternalism that hinders self-advancement; but, after all, what is a higher type of true advancement than a desire to minister to those lower down? and, if this is hindered by some spurious conception of democracy, then all true advancement of the race is hindered. The well-to-do who are feasting up there on the rich viands to which they have climbed through years of competitive struggle may think they are doing very liberally to cry to those far down on the plains, "Come up and help yourselves!" But there are many who cannot come up, who are down there and must forever remain down there, steadying the ladder for others to climb by; and shall no morsel be thrown to them?

Cornell. But is not a certain degree of culture necessary even for the enjoyment of beauty when this is set before one? And must not therefore the school, the church, the library, and the museum take precedence of all other means of affording to the masses the enjoyment of art?

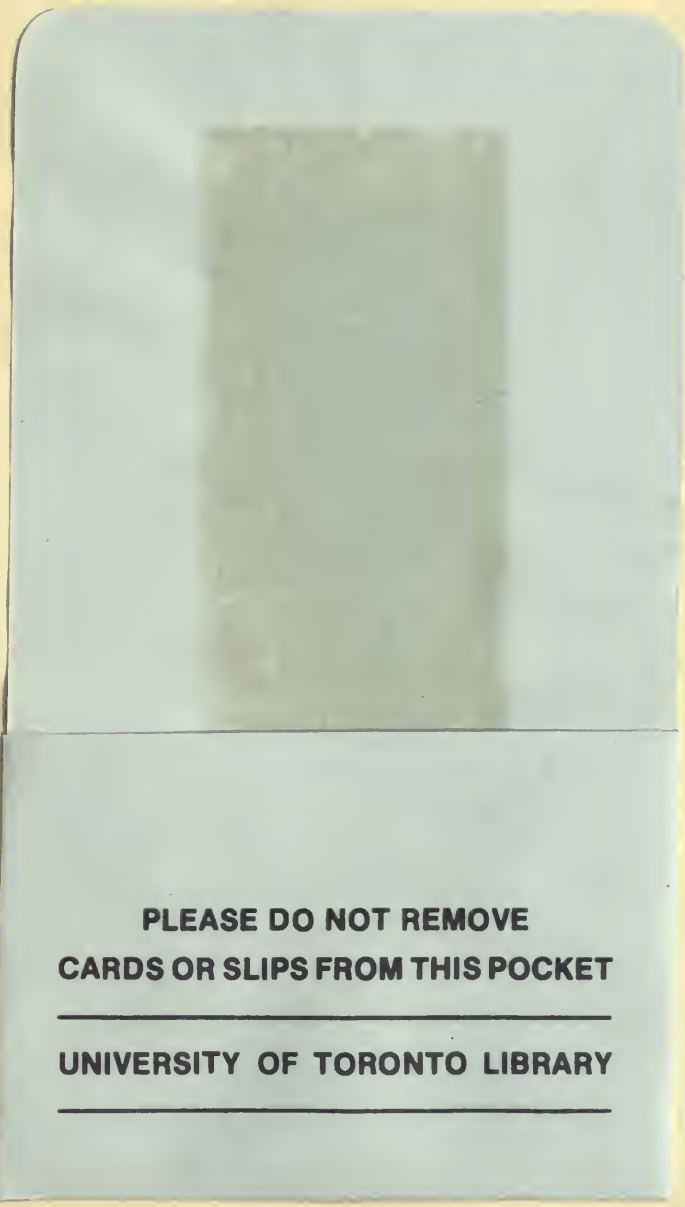
Howard. This would be true if our object were to educate a world where all are to be artists and where there are to be no toilers. But beauty is a thing that grows by gazing on it. There are countries (in the Old World) where the government fosters art, both in architecture, in public monuments, in parks and gardens, in brilliant but tasteful outdoor decorations on public holidays, in free concerts and museums and a subsidized drama. The laboring classes in these countries are not distinguished above others by their literary attainments or by their familiarity

with the technicalities of art itself, although unquestionably they have a finer sense of the beautiful. Their path to the appreciation of beauty has not been through libraries and art schools, but by gazing every day upon beautiful things. These are the people, as a rule, who love their country, and are not lacking in loyalty to the crown and its weal, however great the sacrifice this may require of them. It is hard, indeed, to cultivate the rare plant of patriotism in the hard soil of mere wealth-getting. It requires to be nurtured by the blood of sacrifice, on the one hand, and by the sunshine of sentiment, on the other. And, wherever this sentiment is that of gratitude for that high boon of life which joy in the beautiful affords, the tribute of whatever sacrifice is required of them will not be withheld.

Cornell. Yes, I suppose that love of country is at bottom the love of what the country gives; and there must be degrees in the quality of patriotism as in other things. The interest one feels in a country as a place to make money in must always be inferior to that which is inspired by the feeling that one's country has ministered to the highest human realization of life. Neither does mere intellectual culture always betoken a nation of good fighters. It has quite as often in the past been a sign of a weakened virility and devotion on the part of the people.

Howard. And this is the final and crowning obligation of art to the masses. It alone, if we except religion, enables the people to feel in their devotion to their native land and government something akin to their devotion to Deity. The motto "For God and Country" is only another expression of the sentiment conveyed in the old *pietas* of the Romans. It puts the civic society in the attitude of a benefactor of all classes alike, and as ministering to the people's happiness out of an infinite source, like that of divine love itself. The sordid principle of service for service is lost when the soul is touched with the feeling of a bounty which gives without stint for the pleasure of giving and for the delight its gifts create. This, I take it, is where art partakes of the infinite. In its purely unselfish ministry of the beautiful it is as universal and impartial as the sunlight itself. It bears its own message to the soul of the poor and distressed, whether by beauty of form in sculpture and in architecture or in beauty of sound in music or of sentiment and action in the drama.

Like the Creator of the universe, it cultivates the love of the beautiful, not by text-books about beauty, but by giving the beautiful itself with its never-failing joy. It is, therefore, by this gift of beauty to the life of the toiling masses that governments may fulfil their high function of standing in the place of God; and it is by this tribute of wealth and culture, through the divine ministries of art, to the happiness of the masses who toil, that the balance of human good is kept even, when measured by the happiness experienced both by the giver and those benefited by the gift.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